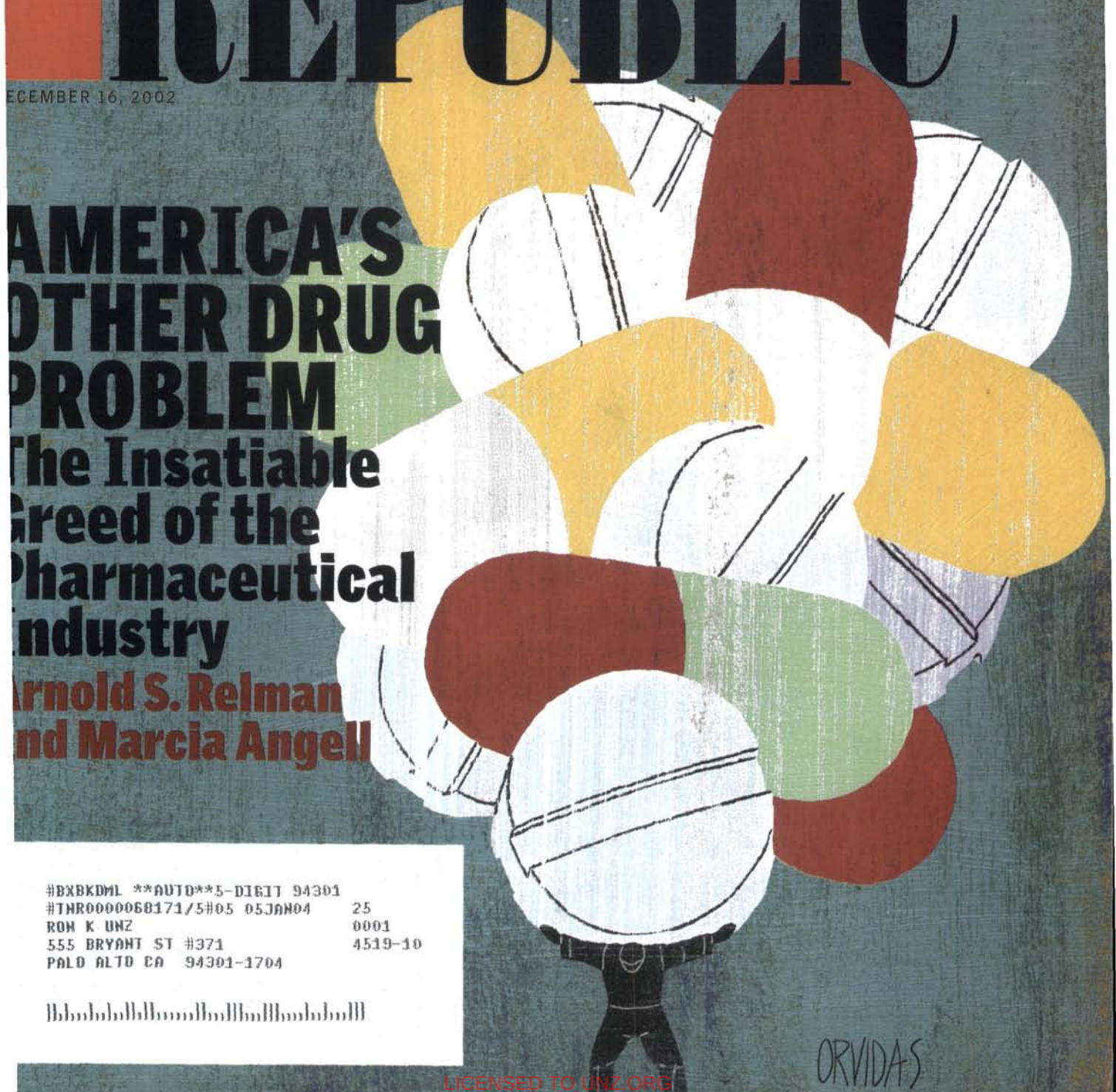
CHINA'S PHONY ECONOMIC MIRACLE Joshua Kurlantzick

THE NEW REPUBLIC

WALTER ISAACSON ON HENRY KISSINGER

PETER BEINART ON JOHN KERRY

ECEMBER 16, 2002



AMERICA'S OTHER DRUG PROBLEM

The Insatiable Greed of the Pharmaceutical Industry

Arnold S. Relman and Marcia Angell

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CORRESPONDENCE

Dumbstruck

TO THE EDITORS:
As a faithful reader of Andrew Sullivan's website, I was disappointed by his recent characterization of the wildly successful "American Idol" as dumbed-down, lowest-common-denominator, trash television ("Trash Pickup," November 4). It seems that Sullivan has succumbed to a reflexive, knee-jerk, elitist response, tempting one to characterize anything that is broadly popular as somehow aesthetically inferior. I challenge Sullivan to explain what is wrong with "American Idol." I judge this show to be as wholesome and solid as entertainment gets: a group of aspiring entertainers competing to see who is the best. Throughout the show, we were treated to a great deal of singing, ranging in quality, which included some performances that were truly very good. At the end, we got Kelly Clarkson, whose talent is undeniable and who is the sort of person everyone likes to see succeed.

JACK TALLENT
Baltimore, Maryland

TO THE EDITORS:
As to Sullivan's idea that we, the British, are dumbing down you, the Americans, and eroding your culture of civility with our boorish imports, I have two words in response: Jerry Springer.

ROGER MCCARTHY
Crowborough, East Sussex
United Kingdom

Romantic tension

TO THE EDITORS:
The attack by Peter Berkowitz brings me into good company ("Byron at Ground Zero," November 4). Embattled opposition is, of course, an expression of the Romantic tradition, and Berkowitz yearns for battle to protect the integrity of the label "liberalism." He would agree with virtually all my views—except my defense of civil liberties under the U.S. Constitution—if I called myself a "hyper-liberal." He goes into high dudgeon, however, as if my argument is mounted as a serious alternative to his version of liberalism, which he claims stands for "equality in freedom."

Berkowitz's argument gives pedantry a bad name—as though anyone cares about the precise meaning of the "L" word. American political liberals favor governmental intervention in the economy; European followers of Friedrich Hayek stand for just the opposite. A little common

sense would get us to focus on the issues rather than the labels.

Apart from his follow-the-leader defense of military tribunals, Berkowitz expatiates for 6,000-plus words without addressing any of the problems of importance in *Romantics at War*—e.g., war's appeal in our time, the problem of collective action in war crimes, the issues of guilt and shame for wartime atrocities, and the way national guilt mitigates the individual guilt of offenders like Adolf Eichmann and Slobodan Milosevic. He admits that, in discussing these questions, my book "abounds in fertile observations" but nonetheless writes as though the only question of importance is staking out the boundaries of liberalism.

As predicted in chapter two of *Romantics at War*, American academic liberals invariably dilute their conceptual foundations in order to co-opt criticism and thus conclude with Berkowitz that "Romanticism must be understood in light of the liberalism that gives it life." The most threatening idea to this mind-set is the exotic, the different, the incomprehensible, the culture that might really be "other." Not surprisingly, Berkowitz falls into the trap of arguing that his version of liberalism can accommodate any challenge one throws at it.

The basic problem is that Berkowitz seems to think that there is one right answer in the conflict between the self and the nation, between the tradition of personal guilt and the persistent intuitions of national guilt. He does not grasp the idea that one might be divided on these issues and simultaneously feel the pull of distinct, irreconcilable intellectual traditions. Presenting the Romantic appeal of war and national honor need not entail more than two cheers for a view that has been too long suppressed in our own intellectual culture and that nonetheless resonates on the stage of world politics.

GEORGE P. FLETCHER
Cardozo Professor of Jurisprudence
Columbia University School of Law
New York, New York

PETER BERKOWITZ REPLIES:
While observing that he had many fine things to say about Romanticism and war, I argued in my review that George P. Fletcher deepened the "conceptual morass" he sought to untangle. I am afraid that his peevish response makes matters worse. Having published a 240-page book to demonstrate liberalism's obtuseness and inefficacy, he portrays as excessive and mocks as "pedantry" my seven-page effort to defend it. He asserts that I did not address his arguments, but it is he who squanders the opportunity to respond by failing to address my criticisms of arguments central to his book: in particular, my criticism of his truncated vision of liberalism and tendentious interpretation of Romanticism, his superfluous and melodramatic explanation of the American people's support for the war on terror, his sentimental contention that collective guilt should be invoked as a "mitigating factor" in the prosecution of war criminals, and his extreme position that military tribunals are flatly unconstitutional. Finally, Fletcher's letter repeats a basic confusion that I identified in my review: On the one hand, he contends that Romanticism is "incomprehensible," "other," "distinct," and "irreconcilable"; on the other hand, he claims that Romanticism is "a view that has been too long suppressed in our own intellectual culture." Obviously, Romanticism cannot be both radically different from and a concealed part of our moral and intellectual tradition. So permit me to repeat: A protest against the Enlightenment's tendency to apotheosize calculation and abstract reason and the duty to follow universal rules, Romanticism celebrates the passions, the heart, and the imagination. As an interpretation of the natural freedom of human beings, it is both a rebellion against and a child of the liberal tradition. The proper understanding of this tension, which animates not only the liberal tradition but also our politics and our souls, is good for all three.

continued on page 41

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How Much More Evidence Do We *Need*?

The case for all-day kindergarten is too strong to ignore.

To inner-city elementary school teachers, it's as plain as the nose on your face: High-quality, all-day kindergarten gives at-risk children a better chance to succeed in school. That's because poor kids often enter school without knowing their numbers or letters—or even how to hold a crayon. And even with half-day kindergarten, many still are not ready for the challenges of first grade.

But getting already hard-pressed school districts and states to pay for all-day kindergarten is a tough sell. Only eight states and the District of Columbia require school districts to provide it.

However, there's now a substantial body of research confirming what many teachers have long recognized. For example, a study of 17,600 Philadelphia schoolchildren found that all-day kindergarten helps children from low-income families perform better, and it saves the school district millions of dollars. Why? Because children who had all-day kindergarten were 26% more likely than children from half-day programs to reach third or fourth grade without having to repeat a year.

FACT: *In Philadelphia, the switch to 100% all-day kindergarten programs has substantially reduced the number of students who need to repeat first, second or third grade. School officials estimate that the money this saves has shaved 19% off the net cost of providing universal all-day kindergarten.*

Research in Minneapolis shows that minority children in all-day kindergarten gained literacy skills much faster than their peers in half-day programs. School officials credit all-day programs with helping to close the achievement gap for minority children.

These findings are reinforced by an impressive new study from Montgomery County, Maryland. At-risk students in the county's all-day kindergarten programs made significantly greater progress in language proficiency than comparable children in half-day kindergarten. The full-day program now covers virtually all of the district's at-risk five-year-olds. It incorporates small classes, in-service training for teachers, and other elements that research has shown help boost student achievement.

Despite all the evidence, too few communities offer all-day kindergarten. It's time to put into practice for our children what years of research have taught us.

Sandra Feldman, *President, The American Federation of Teachers*

To learn more about the benefits of all-day kindergarten, visit our web site at ***aft.org.***

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TRB

FROM WASHINGTON

Soft Serve

IT'S BECOMING A game: How long into any John Kerry speech, interview, or op-ed before the junior senator from Massachusetts mentions his service in Vietnam? Last week, on NBC's "Meet the Press," it took two questions. "Once you file the papers [for a presidential run] with the Federal Exploratory Committee, there is no real turning back," suggested host Tim Russert. "Well, I mean, I hope not," replied Kerry, "but on the other hand, if you find that—you know, I can remember in times of war, when you turn around, and the troops aren't there behind you."

By my count, Kerry mentioned Vietnam nine times during the interview—often straining to link his service to unrelated issues. Explaining why he supports the death penalty for terrorists, Kerry noted, "Just as I, in a war, was prepared to kill in defense of my nation, I also believe that you eliminate the enemy." Asked about his comment to *The New Yorker*'s Joe Klein that in his youth "there were plenty of times when I was disengaged, frivolous, four sheets to the wind," Kerry brought up his experience as a Navy officer in San Diego—a reference designed to conjure exactly the opposite of disengaged frivolity.

Kerry clearly deserves great credit for serving in a war that the privileged of his generation, right and left, generally evaded. He also clearly understands that any Democratic challenger to George W. Bush will have to convince the United States, above all, that he can be trusted to defend it in a time of war. The big question facing Kerry's candidacy is whether he is going to try to earn that trust on the strength of his ideas or merely on the memory of his service.

So far, it's looking more like the latter. Kerry's plan seems to be to lure the Bushies into a Max Cleland–style attack on his patriotism, then hit them with a draft-dodger sucker punch. "If Dick Cheney ... and a bunch of people who didn't serve want to make a fight, I'm ready for that," Kerry told *The Boston Globe* recently. When Trent Lott and Tom DeLay assaulted Tom Daschle for questioning the war on terror's success early this year, Kerry declared, "One of the lessons that I learned in Vietnam—a war they did not have to endure" was to "never stop asking questions." When THE NEW REPUBLIC's Michael Crowley asked Kerry how he'd respond to GOP ads of Michael Dukakis in a tank (Kerry was Dukakis's lieutenant governor), he replied, "I'll put up an image of me on a boat in Vietnam."

What makes all this chicken-hawking such a pity is that Kerry has actually leveled some important critiques of the Bush administration's foreign policy. He has slammed the president for relying on local proxies in eastern Afghanistan in early 2002, thus allowing key Al Qaeda personnel—including perhaps Osama bin Laden—to escape. And he has pushed for tougher fuel-efficiency standards, calling the bluff of conservatives who can't take on Riyadh because they won't stand up to Detroit. Unfortunately, as Kerry launches his presidential bid, he's focusing less on those arguments than on his identity as a veteran. In the Russert interview, Kerry mentioned the "bad decision" and "mistakes" the Bush administration made in Operation Anaconda and the battle for Tora Bora. But he didn't explain the crucial, and controversial, point: The United States should have put its own troops on the line. And he never mentioned the link between fuel efficiency and national security.

Even worse, Kerry may think that because Vietnam inoculates him against soft-on-national-security charges, he doesn't need to take a clear stand on Iraq and thus risk alienating the Democratic base. Although Kerry voted to authorize unilateral war, you'd barely know it from his public statements. (John Edwards, by contrast, who has no military record to fall back on, has articulated a much stronger pro-war rationale.) On "Meet the Press," Russert repeatedly tried to get Kerry to say he'd support unilateral military action if Saddam Hussein obstructed the inspectors but the United Nations still refused to support war. Yet, despite his vote giving Bush the power to do just that, Kerry repeatedly hedged.

The first time Russert asked him if he'd support "military action against Iraq even without the United Nations," Kerry said such action would be "an enormous mistake." Revealingly, Kerry simply assumed that unilateral war would result from Bush's itchy trigger finger; the idea that the Security Council might oppose war even in the face of genuine Iraqi violations seems barely to have crossed his mind. "I went to New York to meet with the Security Council," Kerry explained, "and they assured me that if we go through that process, and in the end Saddam Hussein does not live up to his responsibilities, they are prepared to stand shoulder to shoulder with us." Kerry never explained why promises from long-standing Saddam-appeasers like France and Russia should be believed. And, by taking them at face value, he displayed the central fallacy of liberal multilateralism—that because Europe can be trusted to confront foreign threats, the United States never need go it alone.

Faced with Kerry's faith in the Security Council, Russert made the question more pointed, asking Kerry how he'd respond "if the French, Russians, Chinese say, 'Well, you know what? It's not a big breach. Let's give him [Saddam] another chance.'" Kerry responded, "If you have a breach that, by everybody's standard, at least in the United States, those of us in the House and Senate, and the president, join together and make a judgment ... and then others—some of them can't be persuaded—that's a different decision." With his response, Kerry conveniently overlooked the fact that he and the rest of the House and Senate had *already* made a judgment—to relinquish their power to determine what constitutes a casus belli to President Bush.

Finally, Russert asked again: "But you would be willing to support the president without U.N. support?" And, for a third time, Kerry dissembled: "I would be willing to support the president providing there is an imminent threat that has been shown and that the breach reaches the standard that we all agree on." *Imminent threat?* Surely Kerry already rendered judgment on that question when he voted to authorize the use of force. But, no matter how hard Russert pressed, Kerry would not take responsibility for his vote on the Senate floor.

Kerry's Iraq answers were, in short, a study in the evasiveness that has cost the Democrats so dearly in 2002. If Kerry thinks he can have it both ways on the war, and win the presidency by turning the debate over Iraq into a debate over Vietnam, he's terribly mistaken. The Democrats' problem isn't that Americans think they're wimps who lack personal courage—were that the case, Cleland never would have lost. Their problem is that Americans think, rightly, that they lack an agenda for protecting the country. Bush understands that in this terrifying new era, what Americans want from their leaders isn't heroism; it's clarity and direction. Maybe John Kerry can provide that—but it won't be because he served in Vietnam.

PETER BEINART

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Late Show

IT DIDN'T TAKE long for the new independent commission investigating the September 11 attacks to go from an unimpeachably noble body to a target of bitter derision. With its oddly provocative choice of Henry Kissinger to lead the panel, the White House has whipped up broad indignation from liberals and editorialists. "[I]t is tempting to wonder," huffed *The New York Times*, "if the choice of Mr. Kissinger is not a clever maneuver by the White House to contain an investigation it long opposed."

That may be so. The White House, after all, initially resisted an independent commission and opportunistically embraced the idea only when the momentum grew unstoppable. And some have suggested that Kissinger, with his affinity for secrecy and his tangled connections to foreign governments and Washington elites, will be an ineffective chairman. But the real problem with the September 11 commission is not that it is headed by Kissinger (and another archetypal Washington insider, former Senate Majority Leader George Mitchell); it is that the commission has arrived too late. Had such a body been convened shortly after the attacks, its findings might have been relevant to the security changes under way. Summoned only now, with its recommendations not expected until June 2004, the best it can offer is therapy for grieving families.

Consider the central goal of the commission, as explained by *The Washington Post* this week: "to ensure that the policy and intelligence failures that made this country so unprepared for the attacks are diagnosed with a degree of authority that precipitates necessary changes." That sounds laudable enough. After all, whatever investigations Congress and the media have conducted into policy and intelligence failures so far have been nothing if not *un*systematic. It's true that such inquiries have unearthed problems like Colleen Rowley and the Phoenix memo, the infighting between the FBI and the CIA, the Immigration and Naturalization Service's pathetic handling of visa applications, and the intelligence report suggesting that Al Qaeda might turn planes into missiles. But even the accumulation of these anecdotal findings doesn't add up to the comprehensive investigation into last year's massive breach of U.S. security that the United States needs.

The problem is that many of the "necessary changes" the commission is supposed to recommend are under way already, more than one year *before* the commission will complete its systematic review. In the 15 months since September 11, 2001, Congress and the president have mandated transformations in airport security. They have approved broad new law enforcement powers for the Justice Department through the Patriot Act of 2001. They have appropriated billions of dollars (though still not enough) to shore up homeland defenses through port and nuclear security, federal air marshals, and tighter border controls. And the new Department of Homeland Security, which massively reorganized the federal bureaucracy to fight terror, has already been designed, signed into law, and will begin forming in March. In other words, many of the problems Kissinger and company will study are likely to have been officially addressed by the time their report arrives in June 2004.

But just as significant as the security changes that have been made since last September are the decisions that *haven't*. More than one year after nearly 3,000 people died in the September 11 attacks, no one of significant authority has been fired or forced to resign. And the sad truth is that now it's too late. Obvious fall guys like FBI Director Robert S. Mueller III and CIA Director George Tenet—who may have been vulnerable in the months following the attacks—have now shored up their political support. What's more, Kissinger is expected to offer more in the way of after-the-fact policy ideas than a condemnation for government officials with whom he may identify all too closely. Asking this week whether Kissinger is qualified for the position, William Safire answered the question this way: "If the main object is to find the sinners of commission, no; if to discover the sins of omission, probably; if to recommend strategic changes in our approach to the war on terror, certainly." Meaning that by June 2004, Tenet, Mueller, and others who might have been held accountable for their failures in the immediate aftermath will be all but assured of their jobs.

Critics who suggest that the president has obstructed the commission are not wrong. They're only wrong about the timing. He did so not last week, by choosing Kissinger, but a year ago, when he quietly resisted calls for an independent commission. Too bad he wasn't securing an "aggressive investigation" with "important legislation"—as he said last week—then. ■

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NOTEBOOK

UNSTIMULATING: Among White House economists, Council of Economic Advisers Chairman Glenn Hubbard is the only one who occasionally wins praise for his intellectual honesty (particularly when compared with his National Economic Council counterpart Lawrence Lindsey). But, the more you listen to Hubbard defend the administration's tax-cutting strategy, the more dubious you have to consider that distinction. Take Hubbard's dismissive statements about the short-term economic stimulus many Democrats—and even some reliably Republican interest groups, such as the Business Roundtable—have lately been proposing. According to today's *Wall Street Journal*, Hubbard "disparaged the idea of any 'temporary tax change' because it wouldn't fundamentally boost long-term economic growth." But who out there is suggesting there are any long-term problems with the economy? Certainly not the people proposing short-term stimulus, who make the exact opposite case: that the country's long-term growth prospects are sound, and all we need is a little boost to get us through the current rough patch. In fact, this argument should be especially familiar to the administration. When promoting his tax cut early last year, President Bush was fond of pointing out how the economy was like a long-distance runner—"somewhat winded but fundamentally strong"—which is to say, not in need of any radical measures. And, when the economy began to falter last fall, Bush began taking a great deal of credit for the tax rebate, the only portion of his tax cut that could be considered a short-term stimulus (and that, we should add, was the brainchild of Senate Democrats). "The rebate checks are now hitting," Bush crowed at a Labor Day rally. "People've got more money to spend or invest." So for Hubbard to now dismiss a stimulus package on the grounds that it doesn't promote long-term growth not only misses the point, it directly contradicts the administration's own earlier justification for its tax cut. So much for intellectual honesty.

GET A JOB: Perhaps it's no longer surprising when President Bush repeals a regulation that his pals in the business community dislike. But what continues to amaze is the audacious dishonesty with which the administration defends these corporate favors. Take this week's news about paid family and medical leave. The Family and Medical Leave Act, passed in the early days of the Clinton administration, guarantees employees of large firms twelve weeks of unpaid time-off if they need to tend to infirm relatives, care for newborns, or deal with medical problems of their own. Relatively few Americans take advantage of the law, largely because they cannot afford to lose the paychecks. So, in 2000, President Clinton came up with a creative way to get them some help; allowing states to give workers on such leave temporary stipends paid out of state unemployment insurance funds. Even though no state had yet taken advantage of the Clinton regulation, the business community—fearing that employees might actually start taking family leave—lobbied furiously for its repeal. This week, Bush granted their wish. Which brings us to the audacious part. Queried about the move, a Labor Department official responded, "Our first priority is to help laid-off workers and their families, and this new measure strengthens their safety net." Fair enough, except for one little thing: Where was this "first priority" just a couple of weeks ago? In late November, Democratic congressional leaders implored Bush to endorse a measure extending unemployment benefits to 800,000 workers, a measure House Republicans had refused to take up. The White House responded with stony silence, and now the measure is dead. Apparently, what the administration meant to say this week was that helping the nation's unemployed is its "first priority" only when it coincides neatly with a request from the U.S. Chamber of Commerce.

DEATH AND POLITICS: If Massachusetts Senator John Kerry hopes to be seen as a John McCain–style straight-talker, his position on the death penalty will not be a place to linger. Appearing on NBC's "Meet the Press" last weekend to announce his presidential candidacy, Kerry twisted himself into knots as he tried to make his opposition to capital punishment sound tough. Under questioning from host Tim Russert, Kerry insisted that his objection to execution is "not moral" but stems from his belief that life in prison is the harsher fate. "[D]ying is scary for a while," Kerry explained, "but in the end the punishment is gone." Even if one ignores the fact that few condemned felons likely share this view (being dead, after all, lasts forever), Kerry's argument is utterly at odds with his past pronouncements on the subject. During his 1996 reelection campaign (the last instance we could find when he explained his position), Kerry made it clear that his objection was a moral one: "I don't think a state honors life by turning around and sanctioning killing." Then there's the suspiciously convenient exception Kerry now allows for terrorists. "I am for the death penalty for terrorists because terrorists have declared war on [our] country," he told Russert. But this, too, is a precise flip-flop from the logic he embraced in the past, when he cited fighting terrorism as a reason to oppose the death penalty. According to *The Boston Globe*'s David Nyhan, when challenged on his position back in 1996, "Kerry sweetly rejoined that other countries won't extradite terrorists to nations with capital punishment." It's enough to make McCain wince.

CONSPIRACY THEORY: Were it not for some intrepid reporters, it's doubtful the American public would know as much as it does about the despicable double game Saudi Arabia is playing in the war on terrorism. After all, the Bush administration has certainly done its best to downplay any information that might suggest that the Saudis aren't the vaunted allies the White House claims them to be in fighting Islamic-extremist terrorists. But sometimes even the press pulls punches. Last week, in a *Washington Post* article following up on *Newsweek*'s revelation that money from a Saudi

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princess might have gone to two of the September 11 hijackers, the *Post* described the official Saudi reaction to the *Newsweek* story: "An editorial in the state-controlled newspaper *Al-Watan* said such claims were part of a politically motivated campaign in some U.S. circles." The *Post*'s paraphrasing is a tad peculiar, suggesting as it does that the Saudi paper left ambiguous which "circles" those might have been. It didn't. What *Al-Watan* actually charged in the article cited by the *Post* was, "Circles linked to the Zionist lobby in the United States have resumed their campaign against Saudi Arabia." It's no real surprise that the Saudis, on the defensive about their support for terrorism, would respond with anti-Jewish slurs. What is surprising is that the *Post* would conceal this fact from their readers.

JUDICIAL BYPASS: For anyone who still needs convincing of the idiocy of Congress's rigid cult of seniority, we offer the case of John Edwards and the Democrats' shrinking share of the Senate Judiciary Committee. Thanks to the party's lost majority status, Democrats will be forced to give up at least one, and possibly two, precious seats from the hugely important panel, which is a gateway for all of George W. Bush's judicial nominees—including, of course, any new Supreme Court justices. So far, Edwards has been among the most effective members of the committee, deftly grilling Bush nominees with the fearsome skills he developed as a trial lawyer in North Carolina (and, not incidentally, raising his profile as a presidential contender along the way). But now Edwards, by virtue of his status as the most junior member of the committee, is likely to lose his seat. And who are the Democrats so important to the committee that Edwards must leave so that they can remain? Well, there's Herb Kohl of Wisconsin, known less for his legislative accomplishments than for his ownership of the Milwaukee Bucks NBA franchise. (During confirmation hearings, Kohl's interrogations typically involve him reading staff-prepared questions from a sheet of paper with his head down.) And then there's former RealNetworks executive Maria Cantwell, who has no particular legal expertise but whose many high-tech Washington-state financial supporters have an intense interest in the antitrust and copyright issues that Judiciary handles. If Democrats are to have any hope of blocking the worst of Bush's nominees for the next two years, they will need eloquent voices and sharp legal minds on Judiciary. Unlike some of his colleagues, Edwards meets both standards. But, thanks to the cult of seniority, he'll probably be watching the next big battles from the sidelines.

DEPARTMENT OF CORRECTIONS: The given name of rapper P. Diddy is not Sean Jean Combs ("Class Act," November 25) but rather Sean John Combs. We regret the error. ■

[illegible] | Bruce Reed

TRUTH IS AT HAND

Bush picks Kissinger to head 9/11 inquiry. It's never the crime, it's the cover-up. Luckily, Henry's good at both!

AU CANADA

Canadian P.M. Chrétien's press aide forced to resign after calling Bush a "moron." Bush's response: "That'll teach her to speak French around me."

DYNASTIES

Saudi princess says thousands she gave terrorist pals was meant for charity. Prince Bandar's defense: "We like helping families in need — just ask the Bushes!"

HOME BOYS

GOP tacks offshore tax shelters and onshore pork onto homeland security bill. House Republican motto: Homeland is where the $$$ is.

NASAL SPRAY

New documentary says Saddam makes greeters kiss him under the armpit. Note to inspectors: His biological weaponry may be even deadlier than we thought.

SQUEAKER

Scientists consider hybrid of human and mouse stem cells. New hope for Democrats: No longer have to decide whether you're man or mouse.

EASY MONEY

FEC says congressional candidates can draw salary for full-time campaigning. Rationale: What better way to teach them how to be incumbents?

OLD SOLDIERS

People names Rumsfeld "Sexiest Cabinet Member." Rumstud to Powell: "You can only get so far with diplomacy."

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Mexico City Dispatch

Crazy Like Fox

By GRETCHEN PETERS

LESS THAN ONE month after taking office, George W. Bush took his first international trip as president to visit his Mexican counterpart, fellow rancher and political late-bloomer Vicente Fox. During the 2000 campaign, Bush had touted his knowledge of Latin America to bolster his image as a potential statesman, and now the president reveled in his rapport with the Mexican leader. Jetting into San Cristobal, the dusty small town where Mexico's president was raised, Bush ripped off his tie, donned cowboy boots, stopped in to see Fox's mom, pronounced the two leaders "amigos," and promised an era of close relations. Under a blue sky tailor-made for optimism, Bush announced "a new day in the relationship between America and Mexico."

That day hasn't arrived. When the two leaders met again in late October on the sidelines of a multinational summit in Cabo San Lucas, Fox must have felt he was talking to a different person. According to officials who were present, Fox encountered the kind of neglect and condescension Mexicans have come to expect from the gringos. While Fox pleaded for progress on immigration and trade, the officials say, Bush talked only of Iraq. Bush even balked at an invitation for a state visit to Mexico next year. And, when Fox called on the White House to restart negotiations on immigration reform during meetings between Mexican and U.S. officials last week, he was met with a lukewarm response. "These things will take time," said Secretary of State Colin Powell, who led the U.S. delegation. As one U.S. official told me, "Bush has a short list of priorities at any given time, and currently Mexico isn't on it."

In fact, in the two years since Bush was inaugurated, his administration has managed to alienate the most genuinely pro-U.S. and popularly legitimate president in Mexico's history. And, though Fox still harbors some fondness toward his supposed amigo, he has moved away from the United States, a development that threatens America's hemispheric diplomacy and nascent economic recovery.

The Bush administration's partnership with Mexico once seemed full of possibility. Reflecting the goodwill of the San Cristobal meeting, Fox launched Mexico's most serious and successful effort to fight drug trafficking, rounding up the heads of drug cartels that supply America's narcotics habit. Benjamin Arellano Felix, the once-powerful drug kingpin, now sits in a high-security Mexican prison. His vicious brother, Ramon, whose picture used to appear just below Osama bin Laden's on the FBI's "Most Wanted" list and who is believed to have murdered hundreds of people—some just for sport—was killed in a police shoot-out. Fox also prodded Mexican law enforcement to crack down on commercial piracy, a major concern of American manufacturers, pushing the Mexican police to go after smugglers who brought Asian textiles and electronics into Mexico and then smuggled them, duty-free and bearing MADE IN MEXICO labels, over the U.S. border. Fox even criticized Fidel Castro, an old friend of Mexico. For his part, Bush vowed to push for legislation that would make it easier for Mexicans to legally cross the border and obtain temporary work in the United States.

But the war on terrorism has brought all this to a screeching halt. Since the September 11 attacks, the White House has largely stopped paying attention to Mexico. Instead of allowing migration, Bush has locked down the southern border. Yet many immigration experts believe a deal that legalized temporary work and regularized cross-border movement would actually strengthen security, since immigration officials and border patrol would be able to more effectively monitor foreigners entering the United States. Regulariza-

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tion also might save the border patrol money that could be used to search for Al Qaeda members instead.

And Bush has not just backed away from a migration deal. The administration has also abandoned a pledge to make it easier for Mexican agricultural exports to enter the United States and, in a personal slight to Fox, ignored his pleas to delay the execution of a Mexican, Javier Suarez Medina, convicted of murder in Texas. (Mexican lawmakers argue that Texas authorities violated international law by not allowing Medina to contact the Mexican consulate after his arrest.)

Mexicans are incensed by Bush's snubs. After Medina's August execution, protests erupted in Mexico City. And talk-show hosts and newspaper columnists constantly hammer the United States and Fox about the lack of progress toward an accord on migration.

Fox has retaliated in substantive ways. Currently a member of the U.N. Security Council, Mexico has in recent months stonewalled the United States on Council resolutions. Mexico openly backed French and Russian efforts to water down the Anglo-American resolution on Iraq, and it only supported the U.S.-backed version at the eleventh hour, when it was clear that all the nations on the Council—save Syria—would go along. Fox received accolades in the Mexican press for standing up to Bush, and telephone polls found that a majority of Mexicans approved of Fox's backing of France and Russia.

An angry Mexico could also damage the U.S. economy. A slowdown in the number of migrant workers entering the United States could hamper low-wage, labor-intensive businesses in the Southwest, many of which depend on Mexican labor. Meanwhile, U.S. firms have spent years lobbying to gain access to Mexican industries—oil, telecommunications, electricity—historically controlled by the state. With the U.S. economy still struggling, American companies have salivated over Mexican privatization, viewing it as an enormous potential moneymaker. Fox has supported privatizing national assets in the past; last June, for instance, Mexico sold insurance company Aseguradora Hidalgo, S.A. to New York–based MetLife. But privatization is a sensitive issue in Mexico, and Fox is hard-pressed to turn over the reins of national assets when Mexicans feel slighted by their northern neighbor. So far, Fox is still pushing for privatization, but Mexico's opposition-controlled legislature has played on fears that U.S. firms will take over national assets, and it may force Fox to rethink his plans if he gets no support from the United States on other issues.

Mexico may also back off its support for other major trade reforms, including a potential Free Trade Area of the Americas (FTAA), which Fox has supported in the past and that would extend the North American Free Trade Agreement to every nation in the Western Hemisphere save Cuba. Bush has championed an FTAA and has expended significant political capital in Congress pushing for the deal. An FTAA could prove to be a huge boon for American exporters, and the United States needs Mexico's support for an FTAA to pass.

What's more, the Fox government could stall the opening of Mexico's agriculture market, potentially the biggest opportunity for American farmers in decades. Although Mexico has promised to reduce subsidies for its farmers, a move that would allow U.S. agriculture access to its southern neighbor, Fox has hesitated on slashing these price supports. His government recently announced that it would spend $10 billion to protect its farmers against future reductions of agricultural tariffs, moving it closer to trade war with the United States over farming.

Such retribution against the United States is not inevitable. Fox badly needs a policy success before the Mexican midterm elections in July. Some kind of early agreement on a guest-worker deal could strengthen his hand against forces in Mexico's legislature who want to stall privatization and freer trade. But the Bush administration does not seem willing to even throw him a bone. Bush once sized up Fox as "the kind of man you can look in the eye and know he's shooting straight with you." Almost two years since their first president-to-president meeting at his ranch, Fox probably wishes he could say the same about his neighbor to the north. ■

How to stop Big Brother.

Security Check

By JEFFREY ROSEN

"WE HAVE ALWAYS held out the shibboleth of Big Brother as a nightmare vision of the future that we're going to avoid at all costs," Al Gore told *The New York Times* at the end of November. The Bush administration, Gore said, has embarked on the "most systematic invasion of privacy of every American citizen that has ever been taken in this country." Gore was especially exercised by the Department of Defense's Total Information Awareness program, which proposes to use data-mining technologies to scan public and private databases of personal information and to create risk profiles on millions of American citizens. But he also criticized other recent efforts to tear down the wall that separates domestic intelligence-gathering from ordinary law enforcement. The bill creating a new Department of Homeland Security (DOHS), which Bush signed last month, presumes that the way to fight terrorism is to increase domestic surveillance and to relax the barriers that prevent federal agencies from sharing information with state and local law enforcement officials. Also last month, the appellate panel responsible for overseeing the U.S. Foreign Intelligence Surveillance Court issued its first opinion since it was founded two decades ago, upholding the administration's claim that prosecutors may use secret foreign intelligence wiretaps to search for evidence of crime. For all these reasons, Gore concluded, the Bush administration has "now taken the most fateful step in the direction of that Big Brother nightmare that any president has ever allowed to occur."

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He's half right. In fact, there is nothing inherently objectionable about increasing the power of federal officials to engage in domestic surveillance, as long as those powers are limited to the investigation and prosecution of terrorists. Domestic surveillance becomes dangerous, however, when federal officials are allowed to spy on millions of citizens suspected not of terrorism but of low-level crimes, such as drug offenses or illegally downloading copyrighted music. If the government insists on unrestricted access to our credit-card histories, Internet browsing, international phone calls, and bookstore purchases, who among us couldn't be prosecuted or embarrassed by some low-level wrongdoing?

After the September 11 attacks, unfortunately, the idea of restricting the FBI and the DOHS from using information about low-level crimes that emerges from dragnet searches hasn't been high on the legislative agenda. Instead, Congress is being urged to adopt more modest privacy protections. In a widely cited report, the Markle Foundation recently called for an internal oversight body in the DOHS that would conduct automated audits of data-mining investigations to track who has access to personal information, what they're doing with it, and whether they are engaged in serious inquiries or fishing expeditions. Jerry Berman of the Center for Democracy and Technology argues, "Data should be anonymized to the maximum extent possible; there should be minimal retention of personally identifiable data; and the data should be accurate, complete, and relevant, giving individuals a chance to correct any inaccuracies."

The trouble with these kinds of restrictions is that they are hard to reconcile with the principle of information-sharing and data-mining on which the DOHS has been founded. An agency dedicated to the generic scanning and analysis of millions of bits of personal data can't realistically ask American citizens to consent every time their data is scanned or shared. Instead, the better way to balance privacy and security in a world of integrated databases is to limit the use of evidence discovered in general data searches to the prosecution of terrorism and to prohibit the government from using it to prosecute low-level crimes. It's a simple bargain: The government gets expanded surveillance authority, but only if it agrees to use the authority to prosecute terrorists and not ordinary criminals. If the Bush administration won't accept this trade-off voluntarily, Congress should impose it as a matter of law.

THE RECENT DECISION by the Foreign Intelligence Surveillance Court shows the importance of reserving the most intrusive surveillance powers for the most serious crimes. Congress adopted the Foreign Intelligence Surveillance Act in 1978 partly in response to the excesses of J. Edgar Hoover's FBI, which had used domestic intelligence-gathering to prosecute critics of the Nixon administration for low-level crimes such as tax evasion. The law allows the government to conduct electronic surveillance of individuals when there is probable cause to believe they are agents of foreign powers, even if there is not probable cause to suspect them of particular crimes. In 1995, the Clinton administration adopted guidelines prohibiting prosecutors in the Justice Department from "directing or controlling" foreign intelligence investigations in an effort to prevent them from making an end run around the ordinary constitutional requirement that officials must obtain a warrant before engaging in electronic searches for evidence of ordinary crimes. This wall between domestic intelligence-gathering and criminal law enforcement made sense as a way of preventing Nixon from misusing the IRS records of Vietnam protesters, but it makes less sense in an age when officials need broad discretion to detect and prevent imminent criminal activity before it occurs. As the FBI's failure to seize Zacarias Moussaoui's computer shows, if after reviewing a suspect's flight-school record prosecutors have credible suspicions that someone is a terrorist, there's no reason they should have to wait for a warrant before ordering further surveillance.

In its recent opinion, the Foreign Intelligence Surveillance Court agreed with the Bush administration that the U.S.A. Patriot Act had broken down the "traditional barriers between law enforcement and foreign intelligence." Accordingly, the court allowed prosecutors to use foreign intelligence wiretaps to search for evidence of serious crimes, as long as domestic law enforcement is not the only purpose of the investigation. The court emphasized that prosecutors couldn't use the extraordinary powers of the Foreign Intelligence Surveillance Act as part of routine searches for ordinary criminals, since the government needs to have probable cause at the outset to believe that the target of the surveillance is an international terrorist. Nevertheless, under the new rules, it's conceivable that the government might mistakenly believe that a citizen is an agent of Al Qaeda, secretly tap his phone and Internet logs, and then ultimately prosecute him for a crime unrelated to terrorism. To guard against broad fishing expeditions, then, Congress should simply restrict the government from using foreign intelligence information to prosecute crimes unrelated to terrorism. Instead of restoring the wall between law enforcement and intelligence-gathering, Democrats who are critical of the court's decision could instead amend the Foreign Intelligence Surveillance Act in a way that limits its broad search powers to the investigation and prosecution of terrorist acts.

The same restrictions should apply to the vastly expanded information-sharing contemplated by the new Department of Homeland Security. During the 1970s and 1980s, domestic surveillance was restricted by a combination of bureaucratic and technological inefficiencies, making it hard for local police officials, for example, to check their records against the FBI's watch lists. Moreover, the Privacy Act of 1974 generally prohibits government agencies from sharing information without a citizen's consent (there are many exceptions for law enforcement and national security), and it allows citizens to access and correct any files that the government keeps on them. But after September 11, 2001, those bureaucratic, technological, and legal barriers on

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information-sharing have become obsolete. Both the U.S.A. Patriot Act and the homeland security bill give the government increased authority to share criminal evidence obtained in grand jury investigations with domestic intelligence investigators and also to share intelligence information with state and local officials. But, although the recent laws dismantle old safeguards for privacy, they don't establish meaningful new ones. The only new privacy protection in the homeland security bill is a DOHS privacy officer who reports to Congress but has no independent authority to criticize the department he works for.

The dangers of this vast expansion of domestic surveillance authority are clear. Data-mining is a very imprecise way of identifying terrorists: The risks of mistaken identification are high, and the costs of wrongly identifying someone as a terrorist are even higher. For example, *The Wall Street Journal* recently reported that an FBI watch list widely circulated to private employers was riddled with inaccuracies, misspellings, and people who had been wrongly identified as terrorists. Many of these innocent victims were denied jobs, repeatedly stopped at the airport, and found it very difficult to clear their names once they had been tagged as suspicious in computer databases. For celebrities and prominent politicians, there is also a danger that rogue FBI agents might leak embarrassing personal information to the news media or to opposition research teams in an effort to curry favor with their political superiors. Finally, if the threat of terrorism turns out to have faded in a decade, it's easy to imagine that the expanded authority to troll for low-level crimes might be used as a tool for the enforcement of, say, drug laws. By giving the police virtually unlimited discretion to pick and choose among low-level offenders, the new laws might increase the sense among certain classes of citizens that they are living in a police state.

IF THE DANGERS of increased information-sharing include mistaken identification, politically motivated leaks, and unlimited police discretion, then the solution is clear. As William Stuntz of Harvard Law School argues in a recent issue of *The Yale Law Journal*, expanded surveillance authority and information-sharing among federal agencies is perfectly defensible if—and only if—the government can use the new authority just to prosecute the most serious crimes and is prohibited from using, sharing, or leaking evidence of low-level crimes. Stuntz would limit the list of crimes that could be prosecuted based on evidence produced by data-mining or foreign intelligence searches to the most serious offenses—terrorism, murder, kidnapping, rape, and child molestation. My own view is that, at least in the investigation of citizens, the only crimes that the government should be able to pursue with its new surveillance authority should be directly related to terrorism. But, in deciding precisely where to draw the line, Congress could use as its model the German secret service, which is legally prohibited from passing on to ordinary prosecutors any evidence of low-level crimes, even if it acquires the evidence lawfully. Thanks to the legacy of the Nazis and the Stasi, the Germans have learned a lesson that we haven't yet absorbed: When domestic intelligence officials cooperate too closely with ordinary prosecutors, political oppression is never far behind. ■

Can Turkish Islamists save Islam?

Reform Party

By ROBERT D. KAPLAN

SINCE THE ISLAMIC-LEANING Justice and Development Party triumphed in Turkey's elections, Western commentators have cautiously praised the party's seemingly sound economic plans, pro-Europe sentiment, and apparent moderation. But even optimistic observers haven't grasped the significance of Justice's win: It could usher in an Islamic version of the Protestant Reformation.

The choice of Justice Party member Abdullah Gul as Turkey's new prime minister is perhaps the most obvious indicator. The Protestant Reformation centered on accommodating Christianity to secular life and politics without diluting the religion's moral content and mystical appeal. Gul's own views on Turkey's present and future, and his party's accommodation of religion and state, show that he believes a similar reform is possible in the Muslim world and that Turkey could lead the way.

Gul did not adopt these views just for the recent election; he came to them slowly and thoughtfully. When I interviewed him four years ago in the central Anatolian town of Kayseri, he envisioned a Turkey that would emphasize its Ottoman religious traditions while maintaining the core of Ataturk's secular vision. "We are [both] religious and nationalist, traditional conservatives [Muslim versions of Europe's Christian Democrats]," Gul told me. "Religious tolerance is deeply rooted in our Ottoman tradition. ... The Ottoman caliphate had enough confidence that it didn't mind Kurds and Christians."

At the time, Gul also made it clear that he saw Turkey as a catalyst for regional reformation. "More democratization in Turkey, especially if it has religious and traditional elements, will have a great effect on Syria and Iraq, whose people are occupied by their own regimes," he told me. In other words, Turkey could provide the Middle East with an Islamic imprimatur for liberal change in some of the world's most illiberal countries.

Though Gul probably will be premier only until a court-

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imposed ban is lifted on his party's leader, Recep Tayyip Erdogan, who was barred from holding office after making pro-Islamic statements in the mid-'90s, Erdogan shares Gul's views. Like Gul, Erdogan is not an opportunist whose ideas have recently changed for the sake of short-term political gains. He too has slowly come around to a reformist philosophy that welcomes the traditional religious practices of Turkey's working class while supporting the secular nature of the political establishment. Over the past several years, Erdogan has severed his relationship with Necmettin Erbakan, the grand old man of Turkish Islamic politics. Erbakan has always been suspicious of reform-minded Islam: In the mid-'90s, he made several high-profile visits to Iran and Libya, and he supported the establishment of a religious school system designed to churn out Islamist firebrands. In severing the ties, Erdogan abandoned a powerful mentor and patron, emphasizing his reformist credentials by his willingness to risk losing Erbakan's supporters.

Just as important, the Turkish people and the extremely powerful military, which in 1997 removed another Islamic-oriented party from power, appear ready to embark on this reformation. Military leaders have expressed pleasure that Gul was chosen as prime minister, offering him plaudits the generals never would have given Erbakan. Turkish sources have told me that the military plans to allow the ban on Erdogan to be lifted within the next 60 days.

For their parts, both Gul and Erdogan seem to realize that their party, and their vision, must accommodate the military, which has often represented relatively progressive social forces. The military has imprisoned activists who tried to push the country away from Ataturk's adherence to secular government, and, after a coup in 1980, the military-backed government wrote a democratic constitution that still governs the country. In fact, the military's leftist, secular roots make it the largest pressure group representing the interests of Turkey's cosmopolitan elite. Gul and other leaders have gone to great lengths to woo military leaders and to assure them of Justice's commitment to secular government: Immediately after the election, Erdogan told reporters, "[W]e're not a religious-oriented party. Our future practices will show it clearly." Erdogan also has not complained about being banned from holding office, and Justice Party leaders have made no secret of the fact that they plan to continue Turkey's close ties with Israel—links strongly supported by the military. Turkish Islamists have been saying for some time that if Turkey ever became as democratic as Israel, then Islamic influence in Turkish politics would grow rather than diminish.

In fact, the rise of Erdogan's party has the potential to actually benefit both the United States and Israel. Right now, Israel's bilateral relationship—and, to a lesser extent, our own—is with the Turkish military rather than with the Turkish population as a whole. A rapprochement between the military and moderate Islamists could widen the base of support inside Turkey for these ongoing alliances without compromising their substance.

The Turkish public appears to share the military's openness toward a reformation. Instead of the bleak, joyless speeches that define Islamic rallies in most parts of the Middle East, rallies in support of Erdogan this fall were as lively as rock concerts and full of liberal rhetoric. And, when polled, 74 percent of Turks now say the ban on Erdogan should be lifted so that he can become prime minister and enact reforms, readjusting Ataturk's legacy without dismantling it.

Most telling, the Turkish people voted en masse for the Justice Party while clearly rejecting other harder-line Islamic parties that do not espouse reformist goals. Justice received 35 percent of the vote, the first time in 20 years that any party has won such a high percentage of the electorate; Justice now has an absolute majority in parliament. At the same time, Saadet, a party led by Recai Kutan, Erbakan's successor, received barely over 2 percent of the vote, not even close to the 10 percent needed to enter parliament. Erbakan himself, running as an independent, received a similarly humiliating low vote total.

A reformation is hardly guaranteed. Turkey's continued economic problems could scuttle any government's attempt to push change. Erdogan's party comprises a range of perspectives that united for the election but could still splinter. A potential war in Iraq could have unforeseen consequences on neighboring Turkey.

Still, dramatic change for Turkey, and potentially for its neighbors, is on the horizon. Four years ago, Gul told me of the modern, secular republicanism of the "Young Turk" reformers before and during World War I and of Ataturk afterward: While it ultimately forged a cohesive and liberalizing state from the wreckage of the Ottoman Empire, it also cut Turks off from their own religious roots, as well as from the other peoples of Anatolia. Therefore, he said the best way to preserve Ataturk's legacy is to curb these excesses through a modest return to religious tradition subsumed in a secular state. Now, he has a chance to create that more traditional, Islamic Turkey—a country that, given its military might, abundant water resources, and democratic dynamism, could restore Ataturk's secular republic to a central position in the house of Islam. ■

Why Bush loves the Carpenters.

Drill Sergeant

By JOHN B. JUDIS

FOR DECADES, REPUBLICANS have attacked Democrats' alliance with labor, slamming union "bosses" as corrupt and undemocratic. It's more than a touch ironic, then, that as the Bush administration tries to make political inroads with labor, it continues to favor unions whose recent record on these scores has been particularly problematic. The most

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notorious of these are the Teamsters, who appear to be currying favor with the administration in the hope that it will lift the Independent Review Board that has overseen the union since 1992 (see "Dirty Deal," April 1 & 8). But, fond as George W. Bush may be of Teamster President James P. Hoffa, the president's favorite labor leader is Douglas McCarron, the autocratic and scandal-plagued president of the United Brotherhood of Carpenters and Joiners (UBC), who in March 2001 took his 520,000-member union out of the AFL-CIO. Bush has joined McCarron at the Carpenters' Labor Day picnics in 2001 and 2002, he has entertained McCarron twice on Air Force One, and he has made McCarron the only labor leader invited to address his Economic Summit in Houston last summer. Last month, hosting McCarron in the White House for the signing of the terrorism insurance bill, Bush singled out the UBC's president. "Appreciate your leadership, Doug," Bush said.

Some of the affinity between the U.S. president and the UBC president appears to be personal. At a Carpenters' meeting in Kaukauna, Wisconsin, in September 2001, Bush praised McCarron as a "plain-spoken fellow" and a "doer" rather than a "talker"—terms he might have used to describe himself. But Bush is also getting something more tangible out of his courtship of McCarron. McCarron contributed more than 15 percent of his union's campaign funds to Republicans this year (up from 6 percent in 2000)—a small fraction but double the average for unions overall. The UBC also endorsed Republican gubernatorial candidates Jeb Bush in Florida and Dick Posthumus in Michigan. And, of all the union leaders, McCarron is the most likely to endorse Bush's reelection in 2004, a move that would split labor's ranks and make it easier for Bush to paint himself as the working person's candidate.

Less clear is what McCarron has gotten, or hopes to get, from Bush in return. Questioned on this point, the UBC's president cites Bush's support for oil drilling in the Arctic National Wildlife Refuge and a minor provision in the tax-reform bill that would boost carpenters' pensions. But any benefits the UBC might receive from these policies are dwarfed by other administration initiatives, such as overturning the Clinton administration's stronger standards on workplace muscular-skeletal injuries (which disproportionately affect the building trades) and killing an amendment to the homeland security bill that would have guaranteed that construction workers hired with department funds get prevailing wages in their locales, as mandated for other federal construction workers by the Davis-Bacon Act. Overall, the UBC has fared far worse under Bush than under Democratic administrations.

McCarron would deny it, but his real reason for supporting Bush is likely that he needs the administration's help in quashing a challenge from within his own union. Many carpenters were critical of McCarron's decision to withdraw the union from the AFL-CIO partly over a dispute concerning back dues. "It was very unpopular," explains Michael Cranmer, a carpenter from Boston, "because our general belief is that labor has strength in numbers and that you don't give that up without having a darn good reason." This October, McCarron found himself at the center of still more controversy when it was revealed that he and other directors of ULLICO, a union-owned life insurance company, had made out like bandits through insider knowledge of the company's investment in Global Crossing. Facing a possible indictment, McCarron announced on October 29 that he would return the nearly $300,000 he had made.

But most angering to union members has been McCarron's attempt to transfer power away from democratically elected local unions and put it in the hands of newly created regional councils that McCarron and his allies can more easily control. McCarron's assault on the power of the locals led directly to the formation in March 2000 of Carpenters for a Democratic Union and to a challenge to McCarron's reelection at the UBC's convention that year. It has fueled revolts in California, the Pacific Northwest, Illinois, New York, New England, and Georgia, and it has led carpenters in British Columbia to declare themselves independent of McCarron's international union. Most significant, it has inspired a legal challenge from the New England carpenters, who filed suit to force the Labor Department to find McCarron in violation of federal laws governing union elections. If the New England carpenters win their case, they could topple the hierarchical structure that McCarron has erected. And that's where Bush comes in. So far, Bush and Labor Secretary Elaine Chao have sided with McCarron against the reformers. And McCarron is counting on their continued support, even in the face of legal precedents that clearly favor his opponents.

In 1996, just one year after he was elected president of the UBC, McCarron transformed the union's structure by taking the authority to negotiate and ratify contracts, to dispatch members to jobs, and to send grievances to arbitration away from the union's 2,200 locals and transferring that authority to 55 regional councils. "The locals have become hollow shells, and the regional councils have come to have all the powers," says Carl Biers, the executive director of the Association for Union Democracy, a New York–based labor-reform group. Each regional council is controlled by a strong executive secretary-treasurer (EST). McCarron initially appointed his allies—including his younger brother—as ESTs, with the promise that ultimately the posts would be elected by delegates to the regional councils, who were in turn elected by the locals.

In practice, however, these rules were designed to ensure that the ESTs McCarron appointed would win reelection. They gave the ESTs the exclusive power to hire and fire staff for each regional council, including the contract negotiators and the servicing agents who send carpenters out on jobs. The ESTs filled these positions with the delegates to the regional councils. Thus, the delegates depended on the ESTs for their jobs and their incomes, and they were likely to support them regardless of what the members who elected them thought. Members could rebel against an EST, and in New England they did, but they could not vote him out of office directly. Instead, they had to organize slates of delegates in scores of locals across several states—a tricky proposition,

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especially as it would mean opposing the EST-appointed staff on whom they depended for jobs. The setup also protected McCarron's job. According to Mike Orrfelt, editor of the construction worker magazine *Hardhat*, almost 85 percent of the delegates to the 2000 convention that reelected McCarron were drawn from the regional council staffs that were hired by the ESTs.

But the UBC has always been an active, cantankerous union, and, soon after McCarron engineered his reorganization, he faced widespread revolt. He tried to suppress some dissident locals by punishing their leaders. Shortly after the president of the UBC's Atlanta Local 225 ran against his leadership slate at the 2000 convention, McCarron ousted him by placing the local in trusteeship. But he was not able to suppress the revolt elsewhere—particularly in New England, where opposition to McCarron has moved out of the union hall and into the courts and the Department of Labor.

In New England, the man McCarron appointed as EST quickly ran afoul of the membership by agreeing to reduce carpenters' wage levels to compete with nonunion carpenters. In 1999, a group of New England carpenters, led by Thomas Harrington, filed a formal complaint with the Department of Labor charging that the new structure created by McCarron violated the 1959 Labor Management Reporting and Disclosure Act, which sets rules for the democratic election of union leaders. These rules are supposed to be enforced by the secretary of labor.

In the decade after the law was passed, some union leaders tried to take advantage of an ambiguity in its wording: While the law said that leaders of union "locals" had to be elected directly by their membership, it also said that the leadership of "intermediate bodies" could be chosen by representatives elected to them. Congress had in mind joint union bodies like the AFL-CIO Central Labor Councils, which have no say over collective bargaining; the bill's authors assumed that the responsibilities for collective bargaining would remain vested in the locals. Some union leaders, however, tried to move these functions to intermediate bodies. In two cases, *Schultz v. Employees' Federation of the Humble Oil & Refining Co.* in 1970 and *Donovan v. National Transient Division, International Brotherhood of Boilermakers* in 1984, the courts said they couldn't do so without making the intermediate bodies subject to the same election rules as the locals. In 1973, the Labor Department adopted a rule that the "characterization of a particular organizational unit as a 'local,' 'intermediate,' etc., is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself." If a body performed the functions traditionally assigned to locals—e.g., collective bargaining—then its leadership had to be directly elected by the membership.

HARRINGTON AND THE New England dissidents, in other words, have both legal precedent and the Labor Department's internal rules on their side. Unfortunately, national politics are another thing altogether. Unwilling to buck a powerful union leader, President Clinton's secretary of labor, Alexis Herman, ruled against the dissidents and for McCarron, arguing incredibly that there was no "basis in the statute or in legislative history" for defining intermediate bodies by their "functions and powers." The dissidents appealed, and, early this year, the U.S. Court of Appeals for the First Circuit heard their case.

In theory, the dissidents might have expected a better reception from the Bush administration. In his 2000 presidential campaign, Bush repeatedly portrayed himself as the champion of workers against "labor bosses." But, once elected, Bush made an early exception for McCarron, who, he explained last Labor Day, "cares deeply, deeply about the members of his union." When the dissidents' appeal was heard, Labor Secretary Chao and her department's attorneys also sided with McCarron. In her brief, Chao went even further than Herman, arguing that challenging the UBC's definition of an intermediate body could "undermine self-government within the labor movement." Asked in oral argument why Chao had failed to cite "the applicable regulation and precedents," the Labor Department's counsel opined idiotically that Chao had wanted to avoid legal terminology and to explain her position in terms that the average union member could understand. Writing for the court in February, Judge Sandra Lynch responded, "To suggest that complainants would be led astray by some discussion of the law insufficiently credits the abilities of union members. They were, after all, motivated to invoke the statute and file the complaint."

WITH THAT, THE court sent *Harrington v. Chao* back to the Department of Labor with instructions that if the secretary continued to refuse to rule against the UBC, she would be required to file a statement of reasons "which addresses both the application of the functions and purposes test ... and whether her decision is consistent with her precedents." Though a stern rebuke, it has not yet brought action from Chao. The case continues to sit on the desk of her solicitor general, Eugene Scalia.

According to Alan Hyde, who wrote the Association for Union Democracy's brief, the lawyers for the dissidents are threatening to call for the Labor Department to be held in contempt. There is also grumbling about the decision from lawyers within the Labor Department, who believe that fidelity to the law would dictate supporting the dissidents against McCarron. The department is even being pressured to act by House Republicans on the Committee on Education and the Workforce. Unlike Bush, who has aligned his administration with the most autocratic union leaders, GOP Representatives such as Charlie Norwood and Sam Johnson have been vocal champions of rank-and-file democracy. Last May, partly in response to *Harrington v. Chao*, Norwood and Johnson introduced a bill that would require the officers of "intermediate bodies" that "engage in the negotiation, administration, or enforcement of collective

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THE EAGLE, THE ELK AND THE WARRIOR

One day, a Cheyenne warrior was hunting alone, on foot. He came upon an elk lying dead by the side of a stream. Trapped in the antlers of the fallen elk was a large spotted eagle. The eagle spoke to the hunter.

"Free me from here," the eagle said, "and I will give you a gift."

The warrior did as the eagle re- ...k's antlers and ...great bird flew ...warrior, "Go over ...you will see your gift."

...the hill and ...he looked into ...foot of the ...lamp black ...hers. This

The Cheyenne Eagle Blanket is an interpretation of this legend as told by Ben Nighthorse Campbell. It employs traditional Cheyenne graphics and parfleche design elements to retell the story. This limited-edition saddle blanket, measuring 66" x 40", is the third in the Spirit Series of Native American Blankets. It is woven of pure wool by the Pendleton Woolen Mills for the American Indian College Fund.

BEN NIGHTHORSE CAMPBELL

Thanks to the generous donation of materials and time, 70% of the proceeds from the sale of this blanket go to fund our colleges and our scholarship programs. To learn more, call 1-800-880-5887 or visit our Web site at www.collegefund.org.

The eagle's gift was great because, at that time, a horse could mean the difference between a prosperous life ...and the struggle for simple survival. Today an education can make that same difference. The generosity of ...your support helps our colleges thrive ...and our people grow.

American Indian College Fund

Educating the mind and spirit

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agreements" to be elected directly by the membership. (The bill died in committee because House leaders feared a protracted battle over amendments.)

Meanwhile, don't look for Bush, Chao, and Scalia to rule against the UBC and for union democracy. If they did so, they would threaten McCarron's hold over his union and quite possibly deprive the administration of its staunchest ally in the labor movement. Indeed, on November 26, the day after Bush signed a homeland security bill likely to depress carpenters' wage levels, McCarron was back at the White House again, hobnobbing with a president who appreciates his leadership. ■

Henry Kissinger might just surprise you.

History Student

By WALTER ISAACSON

IN 1975, BACK when Iraq's greatest enemy was the Shah of Iran, Secretary of State Henry Kissinger testified before a congressional panel investigating the covert aid that the United States had given to the Kurdish opposition in northern Iraq. In what was already becoming a pattern, the United States had suddenly abandoned the Kurds, leaving them to be decimated, and Kissinger was asked why. "Covert action," he replied, "should not be confused with missionary work."

The answer was revealing in many ways. It showed his dark humor, aversion to sentimentality, keen understanding of the role that realism must play in a messy world, and somewhat less keen appreciation for the role that morality plays in sustaining a democracy's foreign policy. It also showed his instinctive discomfort with investigative panels that rummage through the secrets of American statecraft. He once grumbled about a Nixon administration CIA director, "Every time Bill Colby gets near Capitol Hill, the damn fool feels an irresistible urge to confess to some horrible crime."

Now Kissinger has been called upon to chair such an investigation, this time a very public one, into the policies and lapses leading up to the September 11 terrorist attacks. For the new commission to succeed, it will need two traits above all: intellectual rigor and brutal public candor. The first comes naturally to Kissinger. The second, however, has not, to put it delicately, always been one of the foremost distinguishing characteristics of his three decades on the world's stage. Therein lies his challenge—and his opportunity.

The picture of Kissinger standing in front of the White House last week reminded those who have made a pastime of observing him that he still tends to elicit exclamation points—He's back!—that are laden with many conflicting emotions. He has won the Nobel Peace Prize and been slurred as a war criminal. He is widely respected as the greatest foreign policy intellectual since George Kennan, and a celebrity to boot, but the mere mention of the two dominant foreign policy endeavors that attach to his name—Vietnam and détente—can cause convulsions on both the left and the right. His selection was thus a surprising one. But, for many reasons, it could turn out to be an inspired one.

FOR MUCH OF his early career, Kissinger courted the patronage of powerful politicians, an attribute that would not serve him well in his current assignment. But he has also been, first and foremost, a student of history. At age 79, he is now looking to secure his rightful place in the pantheon of American diplomacy, which may impel him to protect his independence and intellectual integrity. In the first book he ever wrote, back in 1957, *A World Restored*, he quoted Napoleon's assessment of the Austrian statesman Metternich that "he confused policy with intrigue." Now Kissinger has the opportunity to make it less likely that history will say the same of him. Indeed, he made clear that this was his goal (and set quite a high bar for himself) when he was asked by CNN's Wolf Blitzer the weekend after his selection about a *New York Times* editorial that questioned his capacity to display integrity and independence; he pledged that he would produce a report that would make the paper apologize.

Aiding him in this endeavor will be his feel for how events in one corner of the globe can reverberate in another. He understood how the opening to China in the early '70s would affect relations with Russia, and from this he built a policy framework that protected the possibilities of U.S. global influence after the debacle of Vietnam. Useful as well will be his intuitive sense, drawn from his days on the Harvard faculty, for the way entrenched bureaucracies operate. His healthy skepticism toward their resistance to creative thinking led him to challenge government agencies, including the CIA and the State Department, that he felt were overly concerned with preserving their prerogatives.

His career also shows a recognition that raw intelligence data is useless unless put into a conceptual framework. The annual foreign policy reviews produced by the State Department before he became secretary were amalgams of mushy clichés and unconnected sentiments. He famously insisted, sometimes by throwing early drafts on the floor in a tantrum, on sharper thinking (and an unusual dose of intellectual honesty), which connected the dots of intelligence assessment into a rigorous analysis of global threats.

What's more, Kissinger's worldview has tended to be more nuanced than the for-us-or-against-us approach that the Bush administration, in rhetoric if not always in practice, has promoted. He has worked as an unsentimental realist with regimes in the Middle East, ranging from the Saudis to the Syrians. He has also been a strong internationalist who recognized the need for tending to alliances and lining up

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multilateral support. In early September, in an oblique criticism of some of the thinking at the Pentagon, he wrote a syndicated column arguing that the United States had an obligation to "rest our policies on principles" that were developed through consultations with other nations, rather than unilaterally asserting "an unfettered right of preemption." When Bush expressed some of these same views in a challenge to the United Nations a few days later, Kissinger sent out a revised version of the column praising the president for "defining the challenge as of a magnitude requiring cooperative action by the world community."

All of this should help him as he searches for whatever global forces, bureaucratic bungles, analytical lapses, and failures to coordinate intelligence contributed to the horror of September 11, 2001. Making the process more interesting, and perhaps less cozy, Kissinger has long had a complex relationship with the Bush family and its advisers. When he visited China in 1971, after the opening of relations, he was not candid with the U.N. ambassador at the time, the elder George Bush, whose efforts to prevent Taiwan from being expelled from the United Nations were then undermined. In his autobiography, Bush aimed one of his rare disapproving comments at Kissinger.

When Donald Rumsfeld became President Gerald Ford's chief of staff in 1974, he sought to dispel the perception that Secretary of State Kissinger, rather than the new president, was running foreign policy. (Kissinger had made the mistake, when the press asked him why Ford had been brought into a meeting with the Soviet foreign minister on arcane arms control issues, of quipping, "We felt the need to get some technical competence into the discussions.") Rumsfeld even insisted that Ford, rather than Kissinger, conduct all the press briefings at a NATO summit the following year, which caused Kissinger to threaten to resign. That year, Ford made Rumsfeld defense secretary and made Dick Cheney chief of staff, and Kissinger was convinced that the two men were behind the decision to make him relinquish his title of national security adviser, which he had held in addition to being secretary of state. Again he considered resigning.

When Ronald Reagan challenged President Ford for the Republican nomination in 1976, Kissinger became the whipping boy for conservatives and neoconservatives who felt he sacrificed moralistic fervor in his pursuit of détente with the Soviets, a relationship with China, and secret understandings as part of the endgame in Vietnam. Their wedge was to force a vote at the GOP convention on a "Morality in Foreign Policy" platform plank that denounced détente and "secret agreements." Kissinger wanted Ford to fight the plank, but Cheney helped persuade the president to let it quietly slip by. At the same time, Rumsfeld convinced Ford, over Kissinger's objections, to abandon efforts for a new arms control agreement with Moscow in order to take that contentious issue off the table as well.

Kissinger was a key player four years later in trying to arrange for Ford to be Reagan's running mate, rather than the elder George Bush. Ford made the plan contingent on Kissinger's being appointed as secretary of state, and Reagan refused. The only role that Kissinger played in the Reagan administration was a precursor to his current task: He was made the chair of a bipartisan commission on Central America. "They give me all the good ones," Kissinger privately complained. Despite his desire to return from the wilderness, where he had been banished by conservatives, he did permit the final report to include a recommendation, which he personally did not support, that future aid to El Salvador be made contingent on curbing human rights abuses there.

During his government career, Kissinger's greatest weakness was his aversion to the openness that makes the conduct of American diplomacy more sloppy—but also provides its democratic underpinnings at home and moral authority abroad. From the invasion of Cambodia to the opening with China, Kissinger (taking his cue from Nixon) tended to operate with great secrecy. But he subsequently showed, when writing his memoirs, which were at times surprisingly candid, that he understands the need for the public to be educated. The question now being asked about Kissinger, as he takes over his new commission, is the same as the one posed in 1974 after Nixon resigned. "Will he move to a more open style," Richard Holbrooke wrote in *The Boston Globe* back then, "or will he remain the elusive, manipulative, brilliant diplomatist of recent years?"

For Kissinger to burnish his reputation for history will require, fortuitously, the same thing that will make his September 11 commission successful: a willingness to be open, forthright, and accountable to the public. He is capable of being analytically brilliant and intellectually honest, even brutally so. He is also capable of deciding that it is now in the nation's interest, and his own, to apply that analytic rigor with an unflinching candor. In doing so, he would show his appreciation for the fact that democracies draw strength, not weakness, from giving people the unvarnished truths that they need. ■

RAY BARTKUS

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Is China's economic boom a myth?

Asia Minor

By JOSHUA KURLANTZICK

SHANGHAI, CHINA

THIS AUGUST, I had lunch at Shanghai's American Club, a posh dining room with a stunning view of the city's restored colonial waterfront, with a Chinese-American executive based in Beijing. All around us, American businesspeople were wooing potential Chinese partners, passing around hundred-dollar bottles of Scotch and demanding private tables so that no one would overhear the deals they were making. Though my lunch companion had worked in China for decades, long enough to grow cynical about any place, he shared the other diners' enthusiasm. "I have invested my assets here," he said, gesturing out the window at Shanghai. "If I had more money, I would put it here too. China's economic development is just mind-boggling."

My friend is not alone. Almost all the foreign businesspeople I spoke with in China—even those whose companies have lost millions of dollars in the country—told me that it would eventually become their most important market. Publications such as *BusinessWeek* and *Forbes* have run story after story about China's miraculous economic development. A LexisNexis search of U.S. newspapers turns up thousands of breathless articles.

But what if they're wrong? Look closely at the Chinese economy, and you'll find a far less rosy situation than that portrayed in most of the business press. The country's growth rates are vastly overstated, the result of cooked books and massive deficit spending. Companies selling to the Chinese market—foreign and domestic alike—are struggling just to break even. The economy is plagued by persistent deflation and a useless banking system. "Businesspeople have created a lemming effect," says Graeme Maxton, a specialist on China's auto industry. "They have convinced themselves they have to be in China or their competitors will overtake them, so they ignore economic fundamentals." The Chinese economic miracle, in other words, is largely a house of cards. And, when it falls, the consequences could be catastrophic.

CHINA'S REPUTATION AS a fast-awakening economic giant does have some basis in fact. Over the past two decades, China has made impressive economic progress. In 1978, when Deng Xiaoping began to open the economy, the country was one of the poorest in the world. One American who visited Shanghai in the early '80s recalled the city as a drab metropolis populated by men and women dressed almost exclusively in Mao suits; today, it is a vibrant city boasting dozens of European fashion outlets. Beijing, meanwhile, features a Starbucks in the Forbidden City. And China's eastern seaboard has developed into a low-value manufacturing powerhouse. The Chinese middle class, which comprises slightly less than 10 percent of the country, has seen its disposable income rise sharply; the annual disposable income of urban households grew from roughly 340 yuan ($41) in 1978 to nearly 6,300 yuan ($761) in 2000.

But, despite all the lattes sold at Starbucks Beijing, China is only making positive economic strides, not revolutionary leaps. The Chinese government claims the economy has grown by 7 percent to 10 percent per year for the past two decades. But, apart from the export sector—China's economic bright spot, but only about 20 percent of GDP—the government's numbers do not add up. Thomas Rawski, a groundbreaking economist at the University of Pittsburgh, notes that over the past five years—a time of supposed breakneck growth—China has been plagued by deflation, rising unemployment, and declining energy use, trends normally associated with low growth if not outright recession. Take falling energy use: China's coal-based industries are not known for conservation—on a summer day in the industrial city of Urumqi, I could not see a building across the street—so it is nearly impossible that the country could grow swiftly while using less energy. Looking at energy data, independently compiled GDP figures, and other statistics, Rawski concludes that, between 1998 and 2001, China grew by approximately 4 percent rather than the 7 percent to 10 percent claimed by the government—decent results, but no better than some other developing economies. By comparison, Bangladesh, not a country anyone associates with economic dynamism, grew an average of 5 percent per year during the late '90s. Four percent growth, moreover, is not enough to mitigate the socioeconomic problems that could accompany China's transition from an agrarian economy. According to several Chinese economists, China needs to maintain more than 7 percent annual growth to keep unemployment rates below 15 percent to 20 percent in rural areas.

How could Rawski's numbers differ so much from Beijing's? The primary explanation is that China's national economic statistics, which are compiled from provincial data, have no safeguards against political meddling. When the central government declares its growth targets early in a year—in 1998, for example, Beijing announced that 8 percent annual growth was "a political responsibility"—provincial

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officials simply make up numbers to substantiate them. "China's statistics are based on a Soviet-type system where each town and province reports figures, rather than having a national organization do the reports, and many local officials I have met feel intense pressure to meet targets," says Joe Studwell, editor of the *China Economic Quarterly*. In 2001 alone, according to the government's own State Statistical Bureau, there were over 60,000 reported falsifications of provincial data.

Other prominent economists share Rawski's doubts about China's reported growth rates. Leading Chinese economist and writer He Qinglian told me that, in 2000 and 2001, she traveled around southern China, stopping into provincial officials' offices. When she asked them for their provincial GDP statistics and their methodologies, many were unable to provide either; when they did provide them, the numbers almost never added up.

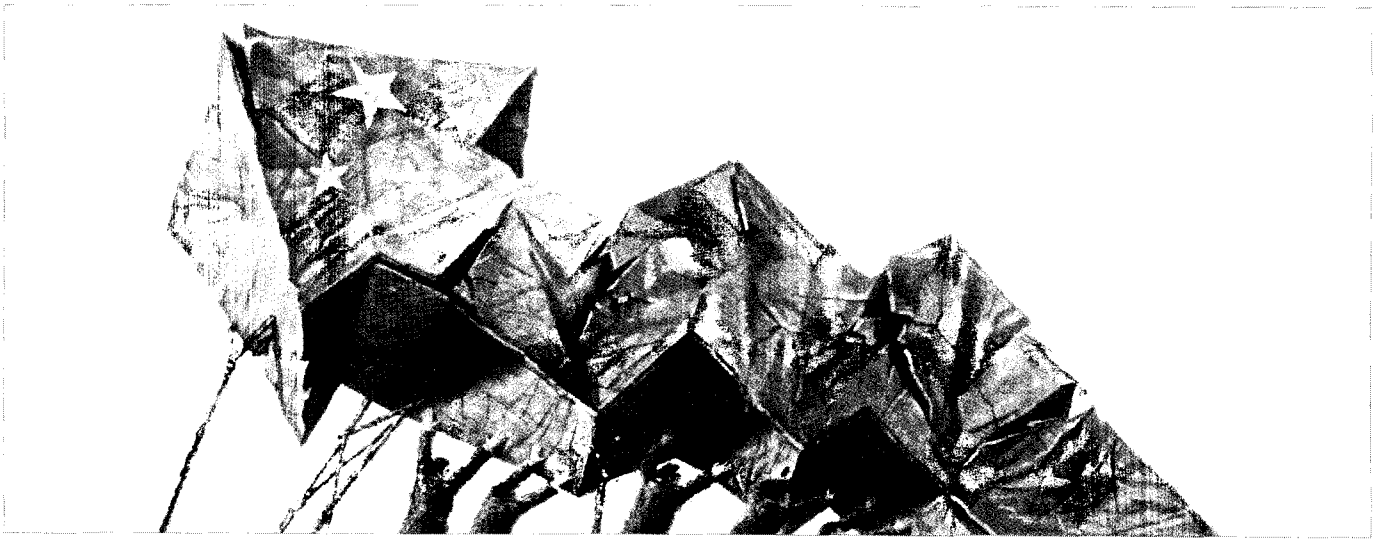
In private, and when speaking to certain domestic reporters, even China's leaders admit the fix is in. When Rawski and other leading economists chat with official statisticians in Beijing, they often hear that no one in the government believes recent GDP numbers. "American economists are going around the U.S. praising China's economy, and when I come to Beijing the people there are vastly more pessimistic," says Rawski. A cursory glance at Chinese-language newspapers over the past five years turns up reams of stories vastly different from those in the gushing foreign press—articles about economic stagnation, falling wages, and deflation. (Though the Chinese press is still censored, it has grown more open in recent years, and some groundbreaking publications like *Caijing* and *Southern Weekend* regularly print information that reflects poorly on China.) Even top officials know China overstates the figures. In 2000, former premier Zhu Rongji, the straightest-talking mandarin in Beijing, warned that "falsification and exaggeration of statistics are rampant."

A similarly dour picture emerges when one investigates the operations of some of the large multinationals and domestic companies targeting the Chinese market. Many Fortune 500 firms tout their China divisions as linchpins of corporate growth—and it's true that some foreign companies such as Motorola have gained a significant market share selling to China. But, this summer, when I contacted nearly 40 major multinationals that focus on the Chinese consumer market, only two—brewing giant SABMiller and fast-food titan Yum! Brands (parent of KFC and Pizza Hut)—were willing to provide even basic information about their China revenues. "If any of these foreign companies were making money in China, they would be talking about it constantly," says Studwell. He believes that less than 10 percent of foreign companies selling to China are reaping profits, a view shared by several other leading China specialists. (Companies that use China as a platform for manufacturing and exporting are a different story: Many have prospered.) The rest, Studwell says, have expanded too quickly, overestimating China's growth and the true number of potential consumers. Recently, as unemployment rises, personal consumption is actually *falling*.

Though convincing foreign companies to talk about their China operations can be difficult, finding stories about business fiascoes is easy. When Beijing's American Chamber of Commerce surveyed its members in 1999, it found that less than 15 percent of respondents had China operations that generated returns above the cost of capital, the normal standard for profitability. Several times a week, China's vernacular papers and the *South China Morning Post*, Hong Kong's leading English-language daily, produce stories about another foreign company's troubles. Picking up just a few random issues of the *Post* and the regional magazine *Far Eastern Economic Review* last spring, I noticed articles on Pepsi, which has never made money in China despite investing $500 million over two decades; on DaimlerChrysler's failing jeep venture in Beijing; and on AOL-Time Warner's tribulations in China.

Major Chinese companies often are doing even worse. Smaller private companies with decent business plans find it nearly impossible to get loans, since China's indebted banking system remains focused on propping up state-owned enterprises (SOEs) backed by the Communist Party. (As a

continued on page 24



RAY BARTKUS

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WHILE MAINSTREAM NEWS WAS BUSY COVERING "SURVIVOR" THE TV SHOW, THE WOMEN OF BURKINA FASO WERE PLAYING IT FOR REAL.

With celebrity fluff and infotainment often masquerading as "news," you're less likely to hear about desperate places like Burkina Faso, a West African nation where more than 50% of the people live in poverty.

Unable to afford cottonseed oil or other ingredients, soap makers have turned to a most unnatural resource: waste spewed into a swamp by an oil refinery. These entrepreneurs wade through the toxic muck, skimming oily residue that they make into soap. Despite numerous drownings and exposure to noxious chemicals, mothers teach the craft to their daughters. They have little choice. Without soap to sell, the family doesn't eat.

This story was reported in the pages of Mother Jones, the non-profit, independent magazine dedicated to bringing you news that matters.

Photography by Herve Cortinat

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result, entrepreneurs are forced to rely on illegal neighborhood lenders; some of the biggest loan sharks in China are old ladies who provide capital to family members' businesses.) Foreign bankers estimate that, because of these deals with SOEs, more than half of the bank loans in China are nonperforming. Rating agency Standard & Poor's has estimated that it would take at least $540 billion—yes, billion—to recapitalize China's banks.

Given their easy access to capital, large state-owned enterprises too often turn into vehicles for asset stripping by upper management or unreformable hulks laden with unproductive workers. Minxin Pei, a China scholar at the Carnegie Endowment for International Peace, estimates that corruption costs China as much as 8 percent of annual GDP. The government auditing body has admitted that more than two-thirds of the biggest Chinese companies falsify their accounting—an astonishing statistic given that investors attacked U.S. stock markets in the wake of this year's corporate scandals, even though most economists believe less than 5 percent of American companies cook their books. In many cases, corrupt Chinese managers have used funds stolen from SOEs to build enormous, virtually useless buildings on China's eastern seaboard as showpieces of their newfound wealth. Parts of Pudong, Shanghai's newest commercial district, look like a ghost town. I ventured into several gleaming buildings that, having drawn no tenants, were just empty shells staffed by guards who spent their time alternating between marching in circles and conducting spitting contests.

Largely because of this excess, China's companies actually are becoming *less* productive. Despite recent stories in *The New York Times* comparing India's economy unfavorably with China's, India, which receives only 10 percent as much foreign investment as China, has posted only slightly lower rates of growth because it uses its capital more efficiently. While India now boasts globally competitive private firms like Infosys and Wipro, China has not produced such productive multinationals since its largest companies are SOEs that monopolize certain sectors, receive guaranteed loans, and waste vast sums of money. As one leading China banker notes, the Middle Kingdom has not moved strongly into higher-value production; even China's exports of electronic goods are mostly just re-exports in which China's only role is labor-intensive assembly.

Unable to produce better companies, China's rating on the World Competitiveness Scoreboard, a ranking of powerful countries based on efficiency of economic performance, has fallen sharply over the past five years, from 21 to 31, a drop that signifies China's economy is becoming less efficient and competitive. At the same time, South Korea, a country supposedly hammered by the Asian financial crisis, has risen from 36 to 27 on the scoreboard. Increasingly inefficient, China has been unable to generate enough jobs for the millions of peasants leaving the agricultural sector. Though internal security forces try to prevent unemployed workers from moving around the country, many take their chances, adding to socioeconomic fluidity and instability. Standing outside a Shanghai mall featuring elite European fashion outlets, I bought apples from a shabby group of unemployed farmers who had left their villages. My produce shopping ended abruptly when local police brusquely grabbed the migrants and beat them.

If Chinese consumers are spending less money, Chinese SOEs are becoming less productive, and foreign companies are struggling to make a buck, how is the country's economy growing at all? A constant stream of foreign capital helps: According to a survey by consulting firm Deloitte & Touche, 90 percent of foreign-invested businesses in China plan to expand their operations in the next three years. More important, as in the former Soviet Union, growth in China has become dependent on massive state spending. China has posted record budget deficits the past two years, and government expenditures rose by nearly 20 percent during the first three quarters of 2002. "In the early days of Deng's reforms, just the loosening of the economy generated development, but that growth fizzled, and now the economy is propped up by deficit-spending," says one leading Chinese scholar. Though limited deficit-spending can prove beneficial to an economy, China risks becoming dependent on deficit-financing for growth, a situation similar to what Japan now faces. Ultimately, when public debt reaches high levels, as it has in Japan, it serves as a drag on growth and, like a drug, can reduce the public's desire for economic reform.

Along with pouring increasing amounts of money into the economy, Beijing has continued to direct growth. Although China recently joined the World Trade Organization, Beijing still not only pushes banks to lend to SOEs but also vows to protect companies in key sectors, such as steel, in an attempt to create national champions akin to South Korea's massive *chaebol* conglomerates, most of which ultimately failed. Former Vice Premier Wu Bangguo, for one, admitted that Beijing would continue to support state-owned companies in vital industries.

The party's desire to manage growth has also included intensifying its hammerlock over the legal system. When I questioned foreign executives like Philip Murtaugh, head of General Motors' China operations, about the rule of law, most repeated the same mantra: Although China still has problems, its legal system is developing. Indeed, in recent years, Beijing has written reams of new laws, pleasing businesspeople who have no idea the legal environment is actually getting worse, since most companies settle rather than go to court. The few foreign lawyers in China who take cases to court know the truth: The new laws mean little as Beijing has moved independent-minded justices out of power. One of the most prominent foreign lawyers told me, "The rule of law has deteriorated sharply. . . . There used to be a group of Chinese judges who were dedicated to creating a real legal system, but the party bosses couldn't tolerate them, and they are almost all gone." In the past few years, the lawyer said, she has watched many of her clients lose cases simply because her opponent had ties to certain party figures. When I expressed

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doubt that China's legal system could be regressing, she forwarded me reams of documents about cases that the plaintiff clearly should have won; in some of the cases, she said, the court recessed, and the judges met in a side room with party officials before announcing their decisions.

This assertion of state control will only further inhibit the economy. Without a decent legal system, China will be unable to encourage risk-taking by private entrepreneurs, break up state-owned enterprises' monopolies, and protect the intellectual property rights central to a higher-value economy. Piracy remains rampant: Walking through a market in Shanghai, I saw hundreds of knockoffs of the latest Hollywood films and CDs.

Meanwhile, domestic debt has reached 60 percent of GDP, an unsustainable figure, and favoring certain sectors will contribute to overproduction and more deflation. Already, Beijing's State Economic and Trade Commission has concluded that there are no goods being produced in China for which demand exceeds supply, another astonishing statistic. Realizing that liberalization is not proceeding as planned, municipalities have set up new trade barriers that only add red tape. To help local shippers, Shanghai has prohibited non-Shanghai trucks from entering the city between 7 a.m. and 9 p.m. Factories in Tianjin, a city less than 100 miles from Beijing, are unable to sell goods in the capital without a license.

Ultimately, China's economic facade probably will crack. And, when it does, the consequences may be disastrous. Any decline in foreign investment could depress growth. Rising unemployment could lead to social chaos. (The number of labor protests quadrupled between 1993 and 1999.) Nicholas R. Lardy, a China specialist at the Brookings Institution, predicts that the rising burden of nonperforming loans could make the country's entire banking system insolvent by 2008. This banking crisis could lead to millions of Chinese trying to withdraw their life savings from banks, followed by panic when they realize the banks are insolvent and have no backing for their deposits, and potentially massive social turmoil.

When the cracks become deeper, Washington and Beijing will have to reassess their relationship. Over the past three decades, the China-U.S. interaction has been primarily a transactional one. The language of interaction between the two nations is business, and business leaders often smooth over squabbles. Few foreign nongovernmental organizations operate in China, cultural exchange is limited, American and Chinese politicians rarely mix, and the overwhelming majority of forums between the two nations are related to business issues.

During economic booms, these transactional benefits smooth over America and China's lack of shared values. But, in the future, China's growing economic weakness could force its latent anger at the United States to the surface. Already, Beijing stokes anti-Americanism in order to deflect criticism of its own actions and expends little effort explaining its relationship with the United States to its people. Imams in Xinjiang, a Muslim province in western China that I visited this September, have been forced to attend "reeducation sessions" laced with anti-American propaganda. Party-controlled media companies have produced popular videos glorifying the September 11 attacks. In one video, as the camera focuses on the rubble of the World Trade Center, a commentator says, "Blood debts have been repaid in blood. . . . This is the America the whole world has wanted to see."

Combined with China's past two centuries of history, during which foreigners dominated the country, this campaign has created a generation of xenophobic young Chinese. Thus far, as China has appeared ready to become a rising economic power, this nationalism has been kept in check, since most younger Chinese assume their homeland is about to take its rightful place as a major trading and business power.

But, if China stumbles on the way to becoming an economic giant, the pent-up anger could burst. Most Chinese university students I have spoken with get angriest when foreign countries seem to be besting China economically, or foreigners appear to be denigrating China's supposed economic miracle. And these Chinese back up their anger with action. When British brewer Bass closed down some of its operations in China over the past three years because they were unprofitable, Bass managers had to hire bodyguards to visit their own plants for fear of physical violence. When economists like Rawski question China's GDP statistics, they are assailed with biting critiques in Beijing's state-run newspapers. When Taiwanese and U.S. companies have won contracts to provide I.T. services to provincial governments, businesspeople say Chinese workers have physically menaced local cadres for selling out to foreigners.

Unlike Britain, Japan, or even Russia, countries with historical ties to the West, China shares little with the United States other than a desire for commerce. Lacking these shared values, if China's economy tumbles more, Chinese resentment toward the West could increase. Then China might actually become an enemy: an unstable country possessing weapons of mass destruction, less restrained by business ties and more likely to embark on diplomatic misadventures—such as an invasion of Taiwan.

Yet the United States continues to view China as a potential threat because of its supposed growing economic power. The main body reporting on China to Congress, the U.S.-China Security Review Commission, recently offered more than 40 recommendations, many of which dealt with China's economic strength. And so, Washington's finest minds have prepared for a rising Middle Kingdom, spending little time contemplating what would happen if China's economy were to implode. Even some of the most experienced China hands seem to have fallen into this trap. As my lunch companion at the American Club in Shanghai told me later that same afternoon, "If I was IBM, or Microsoft, I'd fear Legend [a Chinese computer-maker]. China is coming on strong. . . . The U.S. should be afraid." At least on one of his two counts, my friend is correct: The United States should be afraid. ■

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Stanley Kauffmann on Films

Remembrances

An oddity recurs. When Alexander Sokurov's *Mother and Son* was released here in 1998, I found myself disagreeing with several serious critics yet, in an important way, agreeing with them. It was not a matter of simple dissent. Clearly, this Russian director was a unique, impressive talent: but I couldn't agree that *Mother and Son* was a completely realized work. Here I am again, pulled two ways, about Sokurov's new film **Russian Ark** (Wellspring).

First, I note that any comment about Sokurov's art is, in this country, ridiculously ill-based. Now fifty-one, he has made thirteen feature films and twenty documentaries, yet aside from showings at festivals and other special occasions, *Russian Ark* is only the second of his films to be seen in the United States. A further oddity: though both those films left me troubled, I'm eager to see more. Sokurov's "incompletions" are more interesting than many well-polished items.

The most striking, and most publicized, aspect of *Russian Ark* is that its ninety-six minutes are shot in one long take. There is no editing whatsoever. This is now possible technically because of digital videotape; previously every shot in every film was arbitrarily limited to twelve minutes, the length of a film reel. (The Hungarian master Miklós Jancsó was thus limited in such pictures as *The Round-Up* and *The Red and the White*, which are mostly composed of twelve-minute shots. Surely he would have made these films in one continuous shot if it had been technically possible.) Sokurov's one long take is not a technically permitted stunt: it is ultimately the film's aesthetic being.

At the start the screen is black, and we hear a man's voice saying, according to the subtitles, "I open my eyes, and I see nothing." Well, we never see this man. (The voice is Sokurov's, we are told.) We are inside the Hermitage in St. Petersburg, which shimmers with magnificence. Before us soon appears a figure in nineteenth-century dress—a French marquis, as we learn—who acts as cicerone for the unseen twentieth-century visitor who remains figuratively inside the camera. We begin a journey through the galleries and halls of this breathtaking museum. But this is no mere guided tour. The Hermitage, as we see it, is inhabited by people from different periods in the last three centuries, not arranged chronologically. The first group is in eighteenth-century masquerade dress, chattering their way to a party; another group is in modern clothes; and so on. As people from different parts of those centuries visit the resplendent galleries, as they admire the paintings, attend concerts, converse, flirt, argue, wonder, Sokurov weaves a fabric not of sequential history but of continual habitation, the persistent presence of Russians.

His use of his actors supports the feeling that we are moving, without program, through strata of society. His glances at Catherine II and Peter the Great and the very last czar are like warrants of pastness, and the film's finale, the last royal ball in 1913, is the most poignant such gala I have seen on film since Visconti's *The Leopard*. The music, most of it conducted by Valery Gergiev, is so sumptuous that we almost loll on it. Tilman Büttner, the cinematographer, used Steadicam equipment throughout, which made his camera portable. Figuratively he transforms that camera into the unseen visitor from the present who is sampling social history.

Sooner rather than later, we become aware of the film's unbroken flow, and we feel this motion itself adding to the interest of what we look at. Being carried along by this flow is something like the growing excitement of music that is moving to and through its coda. The very being of the film grows out of this momentum, and the last shot justifies its title.

But it is that selfsame motion, that gradual sweep, that raises questions. What would the film be without it? What is there intrinsically in the film that would grip us if it had been made—even excellently made—in the usual edited manner? We sample a lot of scenes that in themselves have no cumulation, no self-contained point. They merely become an aggregation. The ancient form-versus-content issue doesn't really apply here. Substantively there is no content. Everything we see or hear engages us only as part of a directorial tour de force. That force is exceptional, but since there is not much more to the picture, it leaves us hungry.

A further discontent. This film about the Hermitage and its visitors through the centuries is apparently meant to encapsulate what Russia has been and has cared about. But, except for the few modern visitors, everyone in the film is in the social range from gentry up to royalty. Where is there even a hint of Russia's entirety? Not necessarily its peasants, who didn't frequent museums, but the millions other than the elite who did. This ark has a very selective passenger list. No room on board for any lesser person, no hint (even in the paintings we see) of what is called loosely but handily the Russian soul. One matter seems certain: this would not have been the ark of Russia if the film had been made before 1991. The political change at that time is hardly regrettable, but the implications of the change mark Sokurov's film.

No one could miss the fact that Atom Egoyan wants to be a great director. His aims are high, his skills apparent. But his hard-breathing ambition often makes him strain and overdo. The best work of his that I know is *The Sweet Hereafter* (seen again lately), in which he allows the film to live its life without arty fussings. Unfortunately they are only too manifest in **Ararat** (Miramax).

Egoyan, a Canadian of Armenian descent, wanted to make a film memorializing a horror inflicted on the Armenian people, a horror so huge that it is hard to understand how even our self-concerned world could have forgotten it. During World War I, mostly in 1915, at least one and a half million Armenians resident in eastern Turkey were slaughtered by the Turks. All the victims were civilians: many were women and children. (The Turks called them war casualties.)

But it wasn't enough for Egoyan to address this enormity: he had to make *Ararat* "great." So he added a concept and some story lines to give the film texture and relevance, as he hoped. Central is the device that within Egoyan's film, a film is being made about the slaughter. (The interior film is being shot in Canada.) So from time to time the slaughter becomes a fabricated scene as Egoyan shows us the director, the camera, the studio, and so on. Also

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he braids in an account of Arshile Gorky's life because the painter, as a child, survived the massacre. His famous painting of himself and his mother becomes an icon to Egoyan. More: the Gorky expert whom the inner film's director engages as a consultant gets involved in the story, as does her son and his love life. Even more: the son visits Turkey and returns with cans of film. These are investigated by a customs inspector, and the son's answers provide flashbacks that are strands of the narrative. The customs inspector is played by, of all actors on earth, Christopher Plummer, and the moment we see him we know that the inspection is going to take time. Plummer would not be there for a few routine minutes.

The young man is touchingly played by David Alpay, and the director of the interior film is the grizzled, still attractive Charles Aznavour, himself of Armenian descent. (Inside joke: this director's name is Edouard Saroyan, which was the name of Aznavour's character in Truffaut's *Shoot the Piano Player* long ago.) All in the cast are competent, and some of the slaughter scenes make us ache, but the overlaid material does not enrich, it impedes. We feel that we are catching glimpses of the film that this is supposed to be, as seen through the latticework that Egoyan interposed. ■

How the drug industry distorts medicine and politics.

America's Other Drug Problem

By ARNOLD S. RELMAN *and* MARCIA ANGELL

THE AMERICAN HEALTH care system cannot live without the pharmaceutical industry, but it may not be able to live with it either, unless the industry is greatly reformed. For better and for worse, this enormous and hugely profitable enterprise has become a dominating presence in American life. It uses its great wealth and influence to ensure favorable government policies. It has also, with the acquiescence of a medical profession addicted to drug company largesse, assumed a role in directing medical treatment, clinical research, and physician education that is totally inappropriate for a profit-driven industry. Like most other for-profit corporations, drug companies are impelled primarily by the financial aspirations of their investors and executives. This incentive may serve useful social purposes in the distribution of ordinary goods in most markets, but prescription drugs are not like ordinary goods, and the market for drugs is not like other markets. The misconception that drugs and their market are like other goods and markets explains most of the serious problems with the pharmaceutical industry today.

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Drug Costs

THE RISING COSTS of drugs are the immediate public issue. Expenditures on prescription drugs—now roughly $170 billion per year—constitute a rapidly growing fraction of our $1.4 trillion health care bill. Greater overall use of drugs, higher prices for new drugs, and steady increases in the prices of existing drugs all contribute to an annual inflation in drug expenditures of 14 percent (down from a high of 18 percent in 1999). Within a few years, this surge in costs will probably make drugs the second largest component of our national health care budget, after hospitalization. According to statistics kept by the Center for Medicare and Medicaid Services, American expenditures on prescription drugs, expressed as a percentage of GDP, were virtually steady between 1960 and 1980 but increased rapidly soon thereafter, and by 2000 they had almost tripled.

Last year, a prescription for one of the twenty top-selling brand-name drugs—which is usually for a one-month supply—cost on average about $100. Prices for prescription drugs are on average much higher in the United States than anywhere else in the world. Many patients, particularly the elderly, take several drugs, so drug costs have become a heavy burden for them; but the costs of prescription drugs are now a major problem for all who must pay for them. That includes government and private insurance plans, and uninsured and partly insured individuals.

Resistance to escalating drug expenditures is growing among all the purchasers, and the media is full of critical stories and commentaries. So far, however, none of this has had a noticeable impact on rising drug expenditures. The pharmaceutical industry has been fighting effectively against all efforts to control prices or to limit the markets for its expensive new brand-name drugs. It channels these efforts and most of its public relations and lobbying activities through its trade association, the Pharmaceutical Research and Manufacturers of America (PhRMA). PhRMA's membership includes virtually all American manufacturers of brand-name drugs, and many foreign manufacturers as well. With a full-time staff of 120 in its Washington offices and hundreds of lobbyists working the halls of federal and state government, and with a core budget of some $60 million and large additional subsidies from the industry for special projects, PhRMA conducts an extensive, virtually nonstop campaign on behalf of its clients. This is in addition to the millions spent in Washington by individual pharmaceutical firms promoting their own business objectives.

PhRMA adamantly opposes any regulation of expenditures for brand-name drugs. It argues that high prices simply reflect the very high costs of discovering and developing new drugs. Any form of price control, it claims, would eat into the industry's research and development budget, and thereby choke off the pipeline that brings the public important new drugs. Generic drugs are different, it points out, because they are merely copies of brand-

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name drugs whose exclusive marketing rights have expired, and therefore their manufacturers do not have high research costs. Moreover, PhRMA contends that high profits are a necessary incentive for undertaking the risky and arduous business of discovering innovative drugs. These drugs are vital to the health of Americans, according to the industry, and it would be disastrously shortsighted to lessen the incentives to find them. PhRMA also maintains that, whatever the expenditures for prescription drugs, we get more than our money's worth. According to this argument, the output of the industry's research laboratories not only cures disease and extends and improves people's lives, but probably even saves money by avoiding hospitalizations and other more expensive kinds of treatment. In sum, the industry portrays itself as an exemplar of science-based free enterprise, primarily dedicated to discovering—through costly and risky research—new treatments for disease. It wants the public to believe the catchy slogan of the pharmaceutical giant Pfizer: "Life is our life's work."

THE RHETORIC IS stirring, but the arguments simply do not hold up. First, research and development (R&D) constitutes a relatively small part of the budgets of the large drug companies. Their marketing and advertising expenditures are much greater than their investment in R&D. Furthermore, they make more in profits than they spend on R&D. In fact, their profits are consistently much higher than those of any other American industry. Prices (which bear little relation to the costs of developing and manufacturing a drug) could be lowered substantially without coming close to threatening the R&D budgets of drug companies, much less their economic survival.

Second, the pharmaceutical industry is not particularly innovative, and it is growing less so each year. The great majority of new drugs coming to market these days, although patented, are not new at all. They are variations on older drugs already on the market. These are called "me-too" drugs, and they represent attempts to capitalize on the success of "blockbuster" drugs. (Blockbusters are defined here as drugs with over $500 million in annual sales.) The few drugs that are truly innovative have usually been based on taxpayer-supported research done in nonprofit academic medical centers or at the National Institutes of Health. In fact, many drugs now sold by drug companies were licensed to them by academic medical centers or small biotechnology companies.

Third, while there is no doubt that the best of the new drugs have greatly improved or saved many lives, this is certainly not true of all of them; most add little or no medical value. The use of some drugs has saved money by reducing hospitalizations or the need for expensive procedures, but whether prescription drugs reduce total expenditures for health care in the long run is an imponderable question. As expenditures on drugs continue to rise, the answer becomes more uncertain, the industry's insistence to the contrary notwithstanding.

Far from being a "research-based industry," as it likes to call itself, the pharmaceutical industry now devotes most of its resources to functioning as a vast marketing and advertising enterprise whose best products were discovered and often partially developed elsewhere—usually at public expense. And this industry is hardly a model of free enterprise. It may be free to decide which drugs to develop and to set its own prices, but its lifeblood is government-granted monopolies—in the form of patents and FDA-approved exclusive marketing rights. Drug companies apparently see no contradiction in manipulating existing laws and regulations to stave off competition from generic and foreign manufacturers and lobbying for even more governmental protections while at the same time using free-market rhetoric to demand less government involvement in the pricing and the marketing of drugs.

The industry wants to obscure a basic fact: there is not and there cannot be anything like a free market in prescription drugs. The pharmaceutical business is, for many reasons, critically dependent on government help. That is why it spends so much on lobbying. Moreover, its sales are not determined primarily by price or by consumer choice, but by the physicians who prescribe drugs. And that is why it spends so much more to influence the behavior of doctors.

R&D Costs: How High Are They Really?

BEFORE DISCUSSING THE costs of bringing a new drug to market, we must first explain the steps in that process. The discovery of a drug candidate is usually the result of research into the molecular basis of disease, which is done primarily in academic or government laboratories. The next step is the pre-clinical phase of the R&D work, which is usually done by industry—although not necessarily by the company that ultimately sells the drug. This involves biological screening and pharmacological testing in laboratory animals to determine how the drug is absorbed, metabolized, and excreted, and to learn about its toxicity. According to PhRMA's annual report, approximately one-quarter to one-third of all pharmaceutical R&D expenditures are involved in finding or acquiring a new drug candidate and taking it through the pre-clinical screening phase. The industry claims that only about one in one thousand screened compounds makes it through the pre-clinical phase to the clinical phase—that is, to testing in human subjects.

To begin clinical testing, a drug must be registered with the Food and Drug Administration (FDA), which by law must ultimately approve all drugs for safety and effectiveness before they can be sold. There are four phases of clinical testing. In Phase I, the new drug is given to a few human volunteers to establish safe dosage levels and to study its metabolism and side effects. If the drug looks promising, it moves into Phase II, which involves small clinical trials at various doses in patients with the relevant medical condition. Finally, if all goes well, Phase III clinical trials are undertaken. These evaluate the safety and the effectiveness of the drug in much larger numbers of patients (hundreds or thousands of them), with the expectation of gaining FDA approval if the trials are successful. No more than one in five drug candidates entering clinical testing make it through to FDA approval and reach the market, so the chances that a drug candidate, once selected, will ever get to the market are said to be less than one in five thousand.

The total time from the beginning of pre-clinical testing of a candidate drug to FDA approval ranges from about six to ten years. That includes the time the FDA spends on review of the application for approval (called a new drug application, or NDA), which averages about 16 months. But these times are quite variable, and in special cases they can be greatly shortened. After approval of a drug, the FDA requires the manufacturer to continue its surveillance of the drug and to report unanticipated side effects. The company may also want to do additional clinical studies to gain approval for new uses or formulations of the drug. All clinical studies after the initial approval are designated as Phase IV trials.

According to PhRMA's annual report, the large drug companies last year spent approximately 15 to 17 percent of their income on R&D (before adjustment for tax deductions and credits). This figure is necessarily soft, since in general the industry's accounting for its R&D expenses leaves a lot to be desired, and there are

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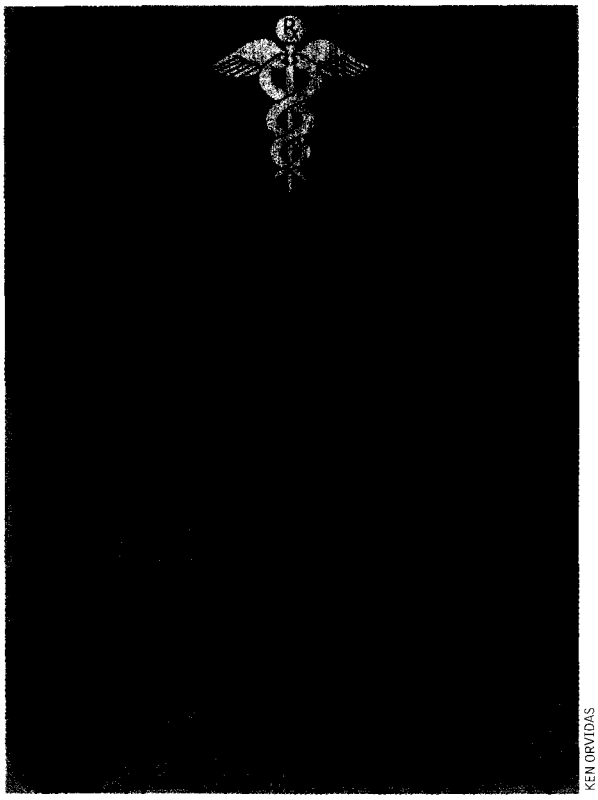
also differing estimates of total income. Much R&D information is considered proprietary. Individual companies report total R&D expenditures in their Securities and Exchange Commission (SEC) filings, and PhRMA's annual report gives industry-wide averages for total R&D as well as average figures for the breakdown of expenses by general R&D functions. But the companies do not make available most of the really interesting details, such as what each company spends, and for what purposes, on the development of each drug. We also do not know how much marketing is concealed under the rubric of "development," particularly in Phase IV post-approval studies. Still, one financial detail of R&D expenses has been widely publicized by the industry: the estimated average total R&D cost of each new drug brought to market. That figure is currently said to be $802 million (in year 2000 dollars), including the amount spent on the many failures and false starts. This huge outlay, which we are told is rising rapidly with the growing expense of clinical trials, is said to justify—indeed to require—the high prices of new drugs.

Pre-clinical and clinical testing and the other tasks required before a drug can be brought to the FDA for approval can be long, difficult, and very expensive. But $802 million apiece? To put it in the kindest terms, that is an imaginary number. It is based on debatable accounting theory and it is premised on blind faith in the confidential information supplied by the industry to its economic consultants at the Tufts Center for the Study of Drug Development, the University of Rochester Graduate School of Business Administration, and the Department of Economics at Duke University, who arrived at this number. Over the years, these consultants have analyzed the costs of new drug development, and the $802 million estimate represents an updating of their work.

Although this latest analysis has not yet been formally published, it was announced at a forum and a press conference last year in Philadelphia. PhRMA, leaders of the industry, and its defenders in the media have been trumpeting the results ever since. Joseph DiMasi of Tufts University, the senior author of this work, kindly sent us a draft of the manuscript describing the analysis, and he discussed his views with us in several telephone conversations. He also shared his opinions about a critical analysis of this work that was released last year by Public Citizen, the Washington-based consumer watch group. Among Public Citizen's objections to the work of DiMasi's group, we consider the following to be most important.

First, the analysis concerns the costs only of new molecular entities (NMEs), sometimes called new chemical entities (NCEs). These are drugs whose active ingredients are newly discovered or synthesized molecules. The analysis was also restricted to NMEs developed entirely within the drug companies. The 68 drugs selected for study are never named; nor are the manufacturers or the individual costs. But NMEs are only a minority of the drugs that are newly approved. As we already noted, most are new dosage forms or combinations of drugs already on the market. Moreover, an increasing number of drugs are simply licensed from academic medical centers or biotechnology companies, and are not entirely developed in the drug companies. So, despite the implication by the industry that the DiMasi calculations tell us the average cost of the R&D needed for all the new drugs sold, these estimates seem to be based on sampling from a highly selected group of drugs. Full disclosure of the data, including the identity of the drugs selected for study and the costs for each, would have been important for the evaluation of the significance of this economic analysis.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Second, the final estimate of the cost per drug is not the actual out-of-pocket cost, but what the authors call the "capitalized" cost—that is, it includes the estimated revenue that might have been generated over the long development period if the money spent on R&D had instead been invested in the equity market. This theoretically lost revenue is known as the "opportunity cost," and it is added to the industry's out-of-pocket costs of R&D. The authors seem to justify this interesting accounting maneuver on the grounds that from the perspective of investors, a pharmaceutical company is really just one kind of investment, which they chose among other possible investment options. But while this may be true for investors, surely it is not true for the pharmaceutical companies themselves. The latter have no choice but to spend money on R&D if they wish to be in the pharmaceutical business, so they have no "opportunity costs." To add the investors' opportunity costs to the company's out-of-pocket cost of developing a drug seems rather odd. DiMasi assures us that this calculation conforms with standard economic thought and accounting practice, but recent events on Wall Street make such reassurance less comforting than it might once have been. In any case, when DiMasi and his colleagues add the "opportunity cost" to their calculated out-of-pocket cost of pharmaceutical R&D ($403 million per drug), the final estimate is approximately doubled.

Finally, the Public Citizen analysis points out that since R&D expenses are deductible from a firm's tax base, calculation of the cost of R&D should be reduced by the amount of corporate tax avoided. This tax saving would reduce the net cost of R&D by a percentage equal to the corporate tax rate (currently about 34 percent). DiMasi says that the corporate tax applies to net income, and since the latter is already reduced by the R&D expenditures, there is, properly speaking, no tax saving and no need to adjust the calculation of the R&D cost that he and his colleagues are making. We are not qualified to debate the accounting terminology, but it seems to us only common sense that were it not for the full deductibility of R&D from the tax base, the pharmaceutical industry's taxes would be higher and its after-tax income would be lower. Why is it not reasonable, therefore, to deduct this difference—whether it is called a "tax saving" or not—from the out-of-pocket expenditures on R&D when calculating the net cost of

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R&D to a pharmaceutical firm? The Office for Technology Assessment, whose report on this subject in 1993 is often cited incorrectly as supporting the DiMasi analysis because it also considers opportunity costs, agrees with Public Citizen's position on tax deductions.

In sum, we believe that Public Citizen's criticisms are substantially correct, and we agree with the group's conclusion that even if one were blindly to accept the reliability of the unrevealed data used in the calculations, the $802 million estimate of "capitalized" cost produced by the industry's economic consultants should be reduced to an after-tax net of less than $266 million. But remember, that would be the average out-of-pocket R&D cost only for the new molecular entities developed entirely in-house, not the average cost of all of the drugs approved each year. Most approved drugs entering the market are not really new, or they are licensed from other sources, or both. Such drugs probably have lower R&D costs, although there are no good data on this point. We conclude that the average out-of-pocket, after-tax R&D cost of most of the drugs upon which the industry's revenue now depends was probably much lower than $266 million (in year 2000 dollars). Tax credits for certain types of R&D would probably reduce that estimate even more.

The suspicion that average R&D costs per drug are not nearly as high as claimed is further supported by other data provided by Public Citizen. If one divides the industry-supplied estimates of total R&D expenses by the total number of drugs entering the market, making appropriate allowances for the lag time between expenditures and the date of entrance into the market, the resulting net out-of-pocket, after-tax costs would probably be less than $100 million for each drug that was approved between 1994 and 2000. That, admittedly, is only a rough approximation, but the general conclusion seems inescapable: that the $802 million estimate now being promoted by the industry and its partisans is much too high.

Whatever the cost of bringing each new drug to market, the total R&D expenditures of the pharmaceutical industry—according to PhRMA, now about $30 billion for all its members in the United States and abroad—are indeed large. But they should be compared with reported expenditures on marketing and administration, which are more than twice as much as R&D expenditures. Moreover, the most important financial fact about the major pharmaceutical firms is that, despite their expenses, they are immensely profitable. The ten American pharmaceutical companies in the Fortune 500 list last year ranked far above all other American industries in average net return, whether as a percentage of revenues (18.5 percent), of assets (16.3 percent), or of shareholders' equity (33.2 percent). (For comparison, the median net return for other industries was only 3.3 percent of revenues.) And this has generally been the case for the past two decades. A business consistently this profitable cannot by any stretch of language be described as "risky" or as needing special protection of its revenues.

How Innovative Is the Pharmaceutical Industry?

The pharmaceutical industry justifies its extraordinary profits largely by the claim that they are necessary as an incentive to continue its vital research. The implication is that if the public wants new cures for diseases, it should give the industry free rein. It is important, then, to ask just how innovative the pharmaceutical industry really is. We think the answer is not very. Drug companies greatly exaggerate their role in the scientific work leading to the discovery of new drugs. As we have already noted, the development of important new drugs is usually the culmination of many discoveries in basic science laboratories outside the pharmaceutical industry. This work increases the understanding of the molecular basis of disease and thereby identifies promising targets and models for the design of new drugs. Most of this groundbreaking research, done with support from the National Institutes of Health (NIH) or other institutions, appears in scientific journals before the big companies become involved. The industry is certainly not the major engine of discovery and medical progress that it would have the public believe. Public investment in research has been primarily responsible for the great medical advances society is enjoying, and this is likely to be so in the future as well.

A general idea of the relative contribution of the pharmaceutical industry to the underlying medical research that leads to the development of new drugs can be gained from a recent study published in the journal *Health Affairs*. The study reported that in 1998 only about 15 percent of the scientific articles cited in patent applications for clinical medicine came from industry research, while 54 percent came from academic centers, 13 percent from government, and the rest from various other public and nonprofit institutions. Remember that these are patent applications for all new drugs and medical innovations, not simply for those ultimately judged to be clinically important. Had the data been limited to only major breakthrough drugs, the industry's role would undoubtedly have looked even smaller.

The relatively small contribution of industry is also clear from an unpublished internal document produced by the NIH in February 2000, which was obtained by Public Citizen through the Freedom of Information Act. The NIH had selected the five top-selling drugs in 1995 (Zantac, Zovirax, Capoten, Vasotec, and Prozac) and found that 16 of the 17 key scientific papers leading to the discovery and development of these drugs came from outside the industry. Looking at all the relevant published research, not just at the key studies, 85 percent came from American taxpayer-supported laboratories or foreign academic laboratories. While it is true that academic scientists may have more incentive to publish their research results than do their colleagues in industry, these data are persuasive: publicly funded medical research is by far the major source of pharmaceutical innovation—not the industry itself.

A more concrete appreciation of the relative contributions of outside scientific laboratories and the drug industry can be gained by considering the histories of three important, groundbreaking drugs that have appeared on the market during the past two decades.

Zidovudine, commonly known as AZT, was first marketed in the United States in 1987 by the company then called Burroughs Wellcome Co., which is now part of a much larger firm called GlaxoSmithKline. AZT, sold under the brand name Retrovir, was the first drug shown to be effective in suppressing HIV infection. It has recently been joined by several other effective drugs, but it usually remains part of the combination drug therapy still in use. The AZT molecule was first synthesized at the Michigan Cancer Foundation in 1964 as a possible treatment for cancer and was studied in many laboratories for that purpose. In 1974, in a German basic science laboratory, it was found to be effective against experimental viral infections in mice. In 1983–1984, U.S. government–supported research at the NIH and at Duke University showed that this molecule also suppressed the AIDS virus in human cells in test tubes and, later, that it was effective in patients.

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Encouraged by the Stevenson-Wydler and Bayh-Dole Acts of 1980 (more about Bayh-Dole later), NIH-supported scientists began to collaborate with Burroughs Wellcome. By 1985, the company was able to obtain a patent on the use of AZT in the treatment of AIDS and to proceed with clinical trials that enabled it to receive FDA approval after an expedited review that required only four months—one of the shortest on record. This history shows that the drug treatment of AIDS, certainly one of the major public health advances in our time, began with basic pre-clinical work conducted almost entirely outside the drug industry and largely supported by taxpayers.

ERYTHROPOIETIN, WHICH IS marketed by Amgen under the name Epogen, is a protein hormone normally produced in healthy kidneys that stimulates red blood cell production. Technically, it is a "biological," not a "drug," because it is a natural substance made in the body. We include it in our discussion because Amgen is an important member of PhRMA, and because many pharmaceutical firms sell biologicals as well as drugs. Erythropoietin was discovered through a long series of investigations in academic laboratories that began in the 1960s and was largely supported by the NIH. This work established that the severe anemia characteristic of chronic kidney disease was largely caused by the failure of the damaged kidneys to manufacture erythropoietin. The isolation and the definitive chemical identification of the substance was finally accomplished by a scientist at the University of Chicago in 1976, but the university did not patent the molecule or initiate any efforts to develop it for clinical use.

To use erythropoietin in the treatment of anemia requires a safe, efficient method of biosynthesis, and this was Amgen's contribution. The task of the company's scientists was facilitated by a recombinant gene technique that was developed and patented at Columbia University (again with NIH support). Amgen, then a small biotechnology start-up company, licensed the technique from Columbia, used it to develop a practical method for recombinant synthesis of erythropoietin, and patented the biosynthetic molecule. By 1987, Amgen had completed its first clinical trials and was able to show that Epogen was safe and effective in treating anemia in patients with kidney failure—a major medical advance in the field.

With FDA approval, Epogen has been widely and successfully used, and now generates for Amgen more than $2 billion in annual sales—mainly from Medicare, which pays for the treatment of kidney failure. Thus, it turns out that taxpayers pay whatever Amgen charges for a drug discovered largely through taxpayer-supported research. For license of its recombinant gene patent, Columbia receives 1 percent of all sales from Amgen.

IMATINIB MESYLATE, MARKETED as Gleevec, is a new molecule that was synthesized in the early 1990s in the chemistry laboratories of the Swiss pharmaceutical firm Novartis and has recently been shown to be spectacularly successful in the treatment of a type of blood cancer called chronic myeloid leukemia (CML). This form of leukemia affects about 20,000 adults in the United States at any given time, and it is usually fatal after about three to five years. The story of imatinib is particularly instructive and worth telling in some detail.

The long trail of basic scientific research leading to the development of this drug began back in 1960 with the discovery of a characteristic abnormal-looking chromosome in patients with CML. Subsequent work showed that the abnormal-looking chromosome is due to the breakage and the subsequent rejoining of parts of two chromosomes. Later studies from many different laboratories showed that this rejoining creates a new gene that directs the production of an abnormal enzyme, which causes white blood cells to become malignant. Other work had shown that similar types of enzymes were probably involved in a variety of other cancers, although not as directly; so chemists in Israel and in the laboratories of Novartis independently set about synthesizing molecules that would inhibit the action of these abnormal enzymes. Novartis patented several such inhibitor molecules in 1994 and added them to its collection of potentially useful drug candidates.

There was apparently no immediate interest at Novartis in determining whether any of these new inhibitors might be clinically useful in the treatment of CML until Dr. Brian J. Druker, a clinical research physician in hematology at the Oregon Health Sciences University in Portland, became interested in their possible use for this purpose. Much of the rest of this story we learned from Druker. Working with a scientist at Novartis, he obtained a small supply of several of the company's most promising enzyme inhibitors. He found that imatinib was the most potent in suppressing the growth of malignant CML blood cells in culture, and furthermore that it had no effect at all on normal

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blood cells. Such specific action is almost unheard of in cancer treatment, and Druker urged the company to explore this exciting lead. But there was little corporate enthusiasm for undertaking further clinical work on imatinib. Druker nevertheless persisted, and Novartis finally agreed to support cautious, limited tests of the drug in Druker's clinic and two other sites. By 1999, Druker was able to report spectacularly successful preliminary results before a large national meeting of American hematologists. The news about imatinib's remarkable effectiveness in CML quickly became public, and it aroused great interest. The company then decided to proceed with large-scale clinical trials to determine whether the drug was safe enough and effective enough to warrant FDA approval and general use in CML. Last year, once the positive clinical evidence was in hand, the FDA quickly gave its approval.

So Novartis's R&D investment in testing imatinib for the treatment of CML was made several years after there was already good scientific evidence to suggest that it might be useful. Druker told us that he did not know how much the company's initial reticence was due to its finding that the drug had toxic effects in dogs at high doses; but given the relatively small number of patients with CML, he believes that a purely business calculation of the size of the likely market also played a role. In any case, the great initial success of this new drug in CML has sparked exploration, in clinical centers and laboratories around the world, of a similar approach to the treatment of other cancers. In the meantime, clinical studies to determine imatinib's long-term effects on CML continue. For most patients starting on Gleevec, Novartis now charges $25,000 for a year's supply of the drug, and the current expectation is that these patients will have to be on treatment for at least several years, with or without supplemental therapy.

How did the company decide on Gleevec's walloping price? We do not know, but in this connection it is interesting to consider the comment made last year by Raymond V. Gilmartin, the influential chairman and CEO of Merck, at the press conference announcing the latest R&D cost estimate by DiMasi and his colleagues. Referring to the $802 million per drug estimate, Gilmartin remarked: "The price of medicines isn't determined by their research costs. Instead, it is determined by their value in preventing and treating disease. Whether Merck spends $500 million or $1 billion developing a medicine, it is the doctor, the patient, and those paying for our medicines who will determine its true value." Since those who pay for a drug are not usually able to judge its value in comparison with other drugs or other forms of treatment, and since those who can make that judgment—the doctors—do not pay for the drug, we do not understand Gilmartin's comment. Taken literally, it would mean that the high prices of today's me-too drugs reflect their medical value—which seems very unlikely. Could he really be saying that the price is simply determined by whatever the market will bear?

These three stories about drug development could be multiplied many times and all the stories would make the same point: the discovery of the important and innovative drugs in the past few decades usually began with basic scientific work at NIH or academic research laboratories, supported by government grants. There have been exceptions, but the pharmaceutical industry has so far devoted most of its R&D resources not to scientific discovery, but to the practical application of discoveries generated at taxpayer expense and to the development of variations on or new uses for drugs already on the market.

All of this makes good business sense for the pharmaceutical industry if, like most industries, it is primarily interested in immediate profits. The kind of wide-ranging, open-ended, and relatively undirected basic research into the molecular biology of disease that is done mainly with NIH support is very expensive, and its results are unpredictable. Whether a given line of investigation will quickly (or ever) lead to the development of a new drug cannot be known in advance. But this kind of research is the only way in which genuine medical progress is made. Pharmaceutical companies, pressured by investors to keep delivering profitable new products—whether they are medically important or not—must use less risky strategies. They use their R&D dollars to imitate top-selling drugs already on the market or to find new uses for their own blockbusters.

That me-too's have come to dominate the new drug market is documented very clearly by the FDA, which classifies drugs under review by their likely therapeutic value and by whether they are NMEs or simply re-formulations and combinations of old drugs. Over the twelve-year period beginning in 1990, 1,035 drugs were approved, and of these only 23 percent were classified as likely to be a "significant improvement" on products already on the market. (In our own judgment as physicians, even many of these drugs would be more accurately described as modest, incremental improvements.) All the others were classified as appearing to have "therapeutic qualities similar to those of one or more already marketed drugs." Moreover, just 15 percent of the approved drugs were classified as both a significant improvement and an NME. Last year, the FDA approved 66 drugs for the entire drug industry. The agency classified only ten as a significant improvement, and only seven of these were NMEs. So the already small percentage of newly marketed drug products that are really novel and important seems to be dropping still further, with me-too's becoming the rule. This trend has continued during the current year.

Industry spokespeople sometimes justify the growing profusion of brand-name me-too drugs by arguing that they increase market competition and keep prices down. For this reason, they object to the term "monopoly" as applied to the exclusive marketing rights conferred by patents or FDA approval. But me-too drugs are not promoted on the basis of price. Instead, they are marketed as being especially effective—usually in total disregard of the facts. There is little evidence of price competition. Thus, although the availability of multiple similar brand-name drugs may have some modulating effect on prices, it is certainly not nearly as great as the price competition that results when unpatented generic drugs enter the market.

Other apologists claim that in drug therapy one size does not fit all. Very similar drugs, they say, may vary in their effects from patient to patient, so it is important to have choices among them. But there is a paucity of evidence to support the notion that if a particular drug does not work for a patient, a virtually identical one will. It might occasionally be useful to have a new, long-acting version of an identical short-acting drug that is already on the market. But we think most experts would agree that there is little or no rationale for having four or more me-too drugs, as is now the case in many fields. There are now five patented statins (a type of cholesterol-lowering drug) on the market, four patented anti-depressants of the so-called SSRI (selective serotonin reuptake inhibitor) type, and seven patented angiotensin blocking agents (drugs to treat high blood pressure and heart failure). We are aware of no good studies establishing the clinical need for so many.

Blockbusters have one thing in common besides their high sales: they are usually treatments for very common lifelong

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conditions. The conditions are not so serious that they are lethal, but they do not go away either. Sometimes they are little more than annoyances, like hay fever. Consequently, large numbers of people may take drugs for these conditions for years, and that is why the markets are so large. People with uncommon or acute diseases are generally not of much interest to drug companies. The major difficulty in launching a me-too blockbuster, however, is in persuading doctors and patients that it is better than the others, since the evidence is at best marginal. Unfortunately, the FDA will approve a me-too drug on the basis of clinical trials comparing it not with an older drug of the same type, but with a placebo or a drug of another type. Drug companies would rather not have a head-to-head comparison, because they might lose. To launch a me-too drug successfully, then, requires a lot of marketing, which largely explains the industry's mammoth marketing expenditures.

Testing Drugs on People

THE ONLY WAY to determine a new drug's safety, effectiveness, and—if this important question is asked—its relative efficacy compared with existing drugs is through properly designed and conducted clinical trials, that is, tests on people. These trials represent the third phase of the R&D process that we have described, and they are the most expensive part of clinical development. Before the FDA will consider approving a new drug for marketing, the manufacturer must present the results of at least one (and usually more) Phase III trials for review by the agency as part of the new drug application. Although the FDA usually reviews the results of the trials submitted to it very carefully, it cannot guarantee the integrity of the work, so it is essential that clinical trials be well designed and executed without bias or manipulation of the results.

Until the past decade, around 80 percent of clinical trials were conducted on patients at academic medical centers and teaching hospitals under the direction of medical faculty, who usually initiated the application for support of the trial. Most of these trials were supported by grants from a pharmaceutical company to the academic institution, although some were funded by the NIH. The design and execution of the studies and the collection, interpretation, and reporting of the data were all the primary responsibility of the academic team, made up of experts in the field. They had no financial ties to the company or to the drug being tested, although part of their salary might have been paid from the grant as compensation for the time that they invested in the trial.

As the number and the size of clinical trials have grown and the industry's need for faster results and access to large numbers of patients has rapidly increased, more and more trials (over half of them) have been shifted to private-practice settings outside the academic centers, where pharmaceutical firms or their contractors have assumed direct responsibility for the conduct of the clinical studies. A large new industry has arisen to serve the pharmaceutical firms' needs. It consists mainly of companies called contract research organizations (CROs), which are hired by the drug companies to organize and to conduct clinical trials. Often working through other companies, they employ physicians in private practice to recruit patients as subjects for the studies. There are reportedly now over one thousand CROs worldwide, and they generated an estimated $7 billion in revenues last year from their contracts with the pharmaceutical and biotechnology industries. Although the physicians they hire to recruit patients also help with the conduct of clinical trials, the results of the studies are analyzed and interpreted by the companies. Control over most clinical trials is now largely in the hands of the pharmaceutical industry, and the influence of the academic centers and their clinical faculty is greatly reduced—even in trials conducted at those centers. These dramatic changes have transformed the entire system for the development and the marketing of new drugs, with troubling consequences.

In an effort to recapture income from the pharmaceutical industry, most of the leading academic centers have set up clinical-trials offices to provide the industry with the same quick, comprehensive services that the drug firms have been getting from the CROs and other private research businesses. These centers now openly court the pharmaceutical industry, offering the services of their clinical faculties, access to patients, and help with the design, the conduct, and the analysis of clinical trials. Although some of the stronger academic institutions still insist on faculty control of the studies and the reporting of results, the pendulum of power has shifted. Drug companies have increasing control over the evaluation of their own products. A very recent increase in NIH support of clinical trials may now be starting to reduce the dependence of major academic centers on contracts with the pharmaceutical industry.

Adding to the problem are the growing financial ties of clinical faculty with the pharmaceutical industry. Almost every academic expert who might be qualified to direct a clinical trial now is paid by one or more firms as a consultant or a speaker. Some medical schools have policies limiting these ties and preventing faculty with financial connections to a company from doing clinical research on that company's drugs, but many medical schools do not, and virtually all of them allow exceptions to their generally lenient rules. The consequence is that the public can no longer assume that clinical reports from academic centers are written by physicians who have no vested interests in the results. About the best to be hoped for is that these interests will be disclosed in the published reports, and that any bias resulting from these financial connections will be balanced by reports from other companies and researchers with competing interests. But the point is that the public can no longer be confident that the testing of new drugs is unbiased.

THE PERVASIVE CONNECTIONS between the pharmaceutical industry and academia are not limited to clinical trials. Virtually every research-intensive medical center in the country now has contractual ties with one or more drug firms, usually involving subsidies for or collaborations with particular research programs and faculty. In return, the firms gain information about new findings before publication, hands-on laboratory education for their research personnel, and rights of first refusal on patents for the products of this research. Drug companies are even beginning to locate their new research laboratories near academic centers to facilitate such relationships. Merck is now building a large new research facility on land in Boston immediately adjacent to the Harvard Medical School (the first such facility in an area previously reserved for academic and clinical institutions), and Novartis has leased two research facilities in Cambridge close to MIT, joining several biotechnology companies already there.

We do not doubt that collaboration in basic research between academic centers and industry, with appropriate safeguards to preserve the integrity and the independence of academic institutions and their faculties, can be very useful. Yet physical proximity and close economic ties between the industry and the academy have a serious drawback. They can involve academic centers and their faculty too deeply in commercial enterprises, at the expense of their traditional missions of education, patient care, and free-ranging research.

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They also threaten the objectivity that is the essential hallmark of good scientific research and medical education. Recently the Association of American Medical Colleges (AAMC) suggested guidelines for managing financial conflicts of interest, but these guidelines are not binding, and they do not address the fundamental issue of whether medical schools and their faculties should have such extensive ties with industry in the first place.

Marketing: Where the Action Is

According to data published in their SEC reports for 2001, the big drug companies spent on average about 35 percent of their income on what most of them call "marketing and administration." At least one major company, Novartis, separates these two functions in its report, assigning 36 percent of total income to "marketing and distribution" and 5 percent to "administration and general overhead." It is unlikely that other companies differ very much from Novartis in this relative weighting. Still, not much is known about the exact distribution of expenditures within the "marketing" category. Whatever the exact figures, it seems clear that marketing and related activities account for the largest part of the industry's expenses. They certainly are far greater than the expenses for R&D or manufacturing. By following the money, we conclude that marketing, not the search for new drugs and their development for clinical practice, is the most important focus for the industry. This conclusion is also supported by the distribution of employees as reported by PhRMA. More than one-third of the industry's workforce is employed in marketing, much more than in R&D, manufacturing, or administration.

If the industry argues that drug prices necessarily reflect its high costs for R&D, then what can it say about its much higher costs for sales promotion? Those who pay for prescription drugs are paying for marketing, too. But if the current crop of new drugs were as valuable as the industry would like us to believe, and if there were not so many me-too drugs, surely it would not be necessary to spend so much money pushing them. A genuinely important new drug, such as Gleevec, does not have to be marketed widely. Cancer doctors treating patients with CML will know about this drug and use it. No sales pitch is needed.

Still, the extravagant expenditures on drug marketing and their effect on drug prices are not the worst part of this story. What should be of even greater concern is the effect of the industry's marketing and advertising money on the independence and the trustworthiness of the medical profession. As a learned profession, medicine has a fiduciary responsibility to patients in particular and to society in general to provide expert, unbiased advice on the use of drugs, based on the best available scientific information. Also, the profession has an obligation to educate its own practitioners about the selection and discriminating use of the best and most cost-effective drugs—old and new, patented and generic. This should be largely the responsibility of medical schools, resident training programs in hospitals, and the postgraduate or continuing medical education (CME) courses organized by professional societies, schools, and hospitals. The latter are required for renewal of doctors' licenses.

But the professional bodies that ought to be responsible for CME have been more or less co-opted by the pharmaceutical industry. There are guidelines, agreed to by the industry and the professional institutions, that are supposed to protect against commercial influence on the content of this education, but most of these guidelines are general and vague. They require that the medical institutions accepting industry support merely approve the CME programs, although the company paying the costs usually recommends the speakers—who, more often than not, are consultants for the company. The softness of the guidelines is hardly surprising, given the fact that they were drafted in 1992 by a task force consisting almost equally of representatives of industry and of the medical profession. They were adopted with only minor changes by the American Medical Association (AMA) and the national professional organization responsible for regulating CME.

The drug companies pay the piper, and by one means or another they call the tune; and the tune is keyed to their sales pitch. The results are clearly demonstrated by published studies showing that industry sponsorship of CME is usually followed by increased prescribing of the sponsor's products. Were there not clear marketing and sales benefits for the sponsoring companies, they would not spend the huge sums that they do on supporting these activities. Most companies pay for medical education from their marketing budgets: this fact should speak for itself.

Perhaps the clearest indication that what the industry calls "education" is really intended to promote sales is the growth of "medical education and communication companies," or MECCs. MECCs are for-profit businesses hired by drug companies to prepare teaching programs and procure medical speakers. The drug companies offer these programs to hospitals or medical groups that are accredited to provide CME. Many MECCs are also officially approved by the medical profession's CME accrediting body to award education credits on their own. The MECCs are candid in their advertising to their drug industry clients. They say their purpose is to increase their clients' sales through professional "education"—and that is what they do. If any further demonstration were needed of the true purpose of what the industry calls "medical education," it was clearly supplied by a recent front-page article in *The New York Times*, with an accompanying report on the PBS program *Now with Bill Moyers*. According to these sources, three of the largest advertising agencies handling pharmaceutical accounts are now investing in companies that do contract research and prepare "educational" packages for the drug industry. This astonishingly incestuous arrangement makes it clear that research and education have both become subordinate to sales promotion.

The largest single piece of the known drug-marketing budget is spent on the direct promotion of drugs to doctors by representatives of drug firms. (This is called "detailing.") There are some 88,000 sales representatives throughout the country, who are paid more than $7 billion per year by the drug companies to visit doctors in hospitals and offices to pitch their employers' products. The number and the ubiquity of these salespeople have increased greatly over the past few years. They roam the halls of almost every sizable hospital in the country seeking opportunities to talk with the medical staff and offering gifts (such as books, golf balls, and tickets to sporting events), drug samples, and free meals. In many teaching hospitals, drug representatives regularly provide lunches for the resident staff in order to gain their ear. They attend conferences, they are invited into operating and procedure rooms, and sometimes they are even present when physicians examine patients in clinics or at the bedside.

Sales representatives also regularly visit doctors in their offices, often armed with information about the doctor's prescribing habits obtained from local drugstores. (There are firms that buy this information from pharmacies and sell it to drug companies.) They make themselves welcome by taking practitioners to dinner in fine restaurants, where company-selected and -paid experts sometimes give talks, and they distribute favors and gifts of all kinds

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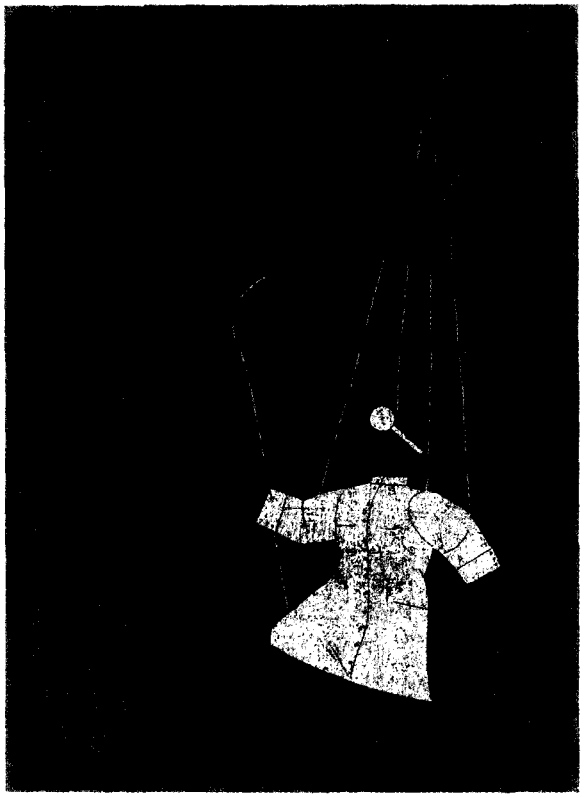
to doctors and their office staffs. Free samples of drugs for physicians to give to their patients are a major gift item provided by representatives of large drug companies. Industry sources say they spend about $8 billion per year on free samples. These samples are an effective way to get doctors and patients committed to the continued use of the sampled product—usually an expensive, newly approved drug, with a long period of exclusivity ahead of it.

Sometimes doctors are even paid to prescribe the product and to report on the results, under the guise of participating in a company's continuing "Phase IV" research. How much of this kind of drug promotion masquerades as R&D is an interesting but unanswered question. Recently, according to an article in *American Medical News*, at least two new businesses in the Cincinnati area have been established to broker meetings between drug representatives and physicians in office practice. One such business charges drug firms $105 for each ten-minute meeting with a doctor—of which $50 goes to the doctor and $5 to a charity selected by the doctor from a list of five.

An effective marketing technique used by many drug firms is to focus on so-called "opinion leaders" in a particular medical specialty. These are prominent experts, usually on medical faculties and hospital staffs, who write papers, contribute to textbooks, and give talks at medical meetings—all of which influence the use of drugs in their fields. Companies shower special favors on these physicians, offer them honoraria as consultants and speakers, and often pay for them to attend conferences in posh resorts ostensibly to seek their advice or to coach them in public speaking. In many medical specialties these days, it is almost impossible to find an expert who is not receiving payments from one or more drug companies in the field. Disclosure of these arrangements is said to be an adequate remedy for the conflicts of interest, but many observers worry about the loss of professional objectivity and independence that such financial ties produce, regardless of whether they are disclosed.

At medical meetings, drug companies are allowed to present symposia or other types of educational programs—with free lunches or dinners—to supplement the programs presented under the sponsoring society's auspices. The latter are themselves often supported by drug firms. The atmosphere at many large medical meetings resembles a bazaar, dominated by the presence of garish drug company exhibits and friendly salespeople eager to ply physicians with samples, gifts, and services while they pitch their company's drugs. In the exhibit areas adjacent to the meeting rooms, physicians wander through a carnival-like scene. Many carry large canvas bags, bearing drug company logos, stuffed with goodies. To some senior physicians who have watched the atmosphere at these meetings evolve from the sober professionalism of a few decades ago to the trade-show hucksterism of today, it is a dispiriting spectacle.

The cumulative effect of all of this is to blur the crucial distinction between drug marketing and professional education.



Medical education worthy of the name requires an unbiased analysis of all the available evidence, led by experts who have no vested interest in the drugs that they are discussing. That is how medical meetings used to be, and that is how they ought to be, but it is most assuredly not what the companies want to support. They are not philanthropists. They need to sell their drugs; and experience has shown that when they organize "educational programs," when they pay for sales representatives to shower favors on physicians while touting the company's products, and when they spend huge sums on creating trade shows at medical meetings, the sales of their products increase. We would like to know how much all of this costs, but the industry prefers to keep these matters secret.

This kind of promotion masquerading as "education" is what largely accounts for the market success of new and expensive drugs that are not significantly different or better than less expensive existing drugs. And for this both the industry and the medical profession must take responsibility. Although there has been criticism from some members of the profession, medical societies and associations have taken no effective steps to oppose these practices. Most of the profession, it seems, finds it difficult to break the habit of taking money and gifts from the drug industry. Over a decade ago the AMA issued guidelines on accepting gifts from industry, but they were voluntary and quite permissive. They have not been observed in practice nor monitored by the AMA. PhRMA recently issued guidelines of its own, which closely follow those of the AMA, but, not surprisingly, they are also voluntary and permissive. It remains to be seen whether this latest effort will have any significant effect on drug-industry practices or will prove to be just another public relations ploy.

The Office of the Inspector General (OIG) of the Department of Health and Human Services recently placed in *The Federal Register* for comment a draft of proposed guidelines for ethical and legal relationships between the pharmaceutical industry on the one hand and physicians, pharmacists, and various purchasers of drugs on the other. The OIG notes that many of the existing practices involving gifts and payments to physicians are intended to influence the prescribing of a drug company's products and may potentially violate federal anti-kickback laws. It urges drug companies to review existing laws and regulations to avoid civil and criminal penalties. The code recently adopted by industry, to which we have already referred, is a minimum standard that certainly ought to be met, the OIG says, but mere compliance with that code does not guarantee protection against persecution for illegal conduct. Although they are only general recommendations, not regulations, the tone of these proposed guidelines from the OIG is stern. It remains to be seen what will happen to them when the drug industry and other interested parties weigh in. In any event, the introduction of such guidelines suggests a rising concern about the influence of the industry on the

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prescribing behavior of physicians and the costs of prescription drugs.

About the only organized sector of the medical profession that seems genuinely concerned about this issue is the national organization of medical students, the American Medical Student Association. Last spring, this group voted for a total ban on the acceptance of all drug-industry gifts and favors to medical students. It was a brave and laudable gesture, but its impact on practicing physicians and their organizations is doubtful. Recently we attended the annual meeting of the state medical society of Massachusetts, where student delegates urged their elders to pass a similar resolution that would apply to physicians. It was decisively defeated in favor of a resolution that recommended further study of the issue.

ONE OF THE most important developments in the marketing of prescription drugs is the recent explosion in direct-to-consumer (DTC) advertising. In 1997, the FDA changed its policies to allow DTC advertising without the requirement that it include medical details on the side effects of drugs. Since then, DTC advertising has burgeoned and is now estimated to be a nearly $3 billion industry. Drug firms now spend about as much on this advertising as they do on advertising to physicians in medical journals and other professional media. Advertisements for blockbuster drugs that are prescribed for common complaints such as allergy, heartburn, arthritis, "erectile dysfunction," depression, and anxiety are seen everywhere. Often celebrities—former politicians, famous athletes, movie stars—endorse the product. Consumers are urged to "ask your doctor" if a certain drug "would be right for you," and to "be sure to tell your doctor if you have kidney or liver problems" or some other medical condition—something we would hope doctors already knew or could find out for themselves.

A variant on the use of celebrities for the promotion of brand-name pharmaceuticals recently attracted much comment in the news. It seems that celebrities are being paid by drug companies to appear on television news and talk shows and enthusiastically mention their use of a particular drug. Audiences are not informed about the financial arrangement, and are thus allowed to assume that the celebrities are simply volunteering their personal experience. Embarrassed by these revelations, networks are now scrambling to require full disclosure.

Drug companies have been delighted with the effect of DTC advertising on their sales. Advocates like to describe this obvious form of selling as "education," just as they describe their advertising to doctors. But drug companies, owing to their clear conflict of interest, are not the ones to educate people about the drugs that they are selling. DTC ads mainly benefit the bottom line of the drug industry, not the public. They mislead consumers more than they inform them, and they pressure physicians to prescribe new, expensive, and often marginally helpful drugs, although a more conservative option might be better for the patient. That is probably why DTC ads are not permitted in other advanced countries less in the thrall of the pharmaceutical industry.

Market Exclusivity: Gaming the System

AS WE EMPHASIZED earlier, the lifeblood of the pharmaceutical industry is government-granted monopolies, in the form of patents and FDA approval for exclusive marketing. The two forms of exclusivity operate largely independently, almost as backups for each other. Both make it illegal, for a specified time, for competitors to sell the same drug. Stretching that privileged time by a variety of stratagems is arguably the most innovative activity of today's drug companies. For blockbuster drugs, it is certainly the most lucrative. Once a company loses its exclusive marketing rights and opens itself to competition from generic drugs, prices often fall rapidly to about one-fifth of what they were. For blockbusters, that can mean a yearly sales loss of hundreds of millions of dollars.

Patents are supposed to be granted only for discoveries or inventions that are useful, novel, and not obvious. In the past two decades, however, these three standards have been considerably relaxed, so that now nearly anything can be and is patented—including new uses, dosage forms, combinations of old drugs, even the coating of pills. In addition, as a result of a number of industry-friendly laws and regulations passed during the same two decades, the period of exclusivity has become stretched to the breaking point. In 1980, exclusivity lasted for the standard 17-year patent term (minus the time for clinical testing and FDA approval). Now, given the ingenuity of the industry's legions of patent lawyers, it can be extended for many more years.

In 1984, Congress passed the Drug Price Competition and Patent Term Restoration Act, commonly known as the Hatch-Waxman Act. It added up to five years of exclusivity for certain drugs to compensate for long FDA-approval times, and it also provided for three years of additional exclusivity for introducing changes in drugs already on the market, such as new dosage forms, new indications, or switches from prescription to over-the-counter status. In a misguided attempt to encourage generic manufacturers to enter the market as soon as possible, the act contained two other provisions. First, it made the FDA approval process simpler for generic companies, but it also stipulated that if a brand-name company sued a generic company for patent infringement, FDA approval of the generic drug would automatically be delayed for 30 months—whatever the merits of the lawsuit. Second, it said that the first generic company to challenge a patent would have six months of exclusivity after it finally reached the market, free from competition by other generics.

HATCH-WAXMAN HAS been a bonanza for the big drug companies. While it was meant to stimulate generic competition, it has often had exactly the opposite effect. Since the act was passed, brand-name drug companies routinely file not just one patent on their drugs, but a series of them spread throughout the life of the first patent. These secondary patents are on every conceivable attribute—never mind usefulness, novelty, or non-obviousness. The result is that generic companies are routinely charged with patent infringement, which immediately triggers 30 months of additional exclusivity. When a generic company challenges a secondary patent, the brand-name company sometimes strikes a deal with it that defers entry of the generic product into the market. Owing to the six-month exclusivity given to the first generic company that challenges a patent, other generic companies are also stopped. Through such shenanigans, exclusivity can be prolonged for years.

This sort of gaming of the system is not supposed to be possible. Under the law, only challenges to certain patents may trigger the 30-month stay on generic entry into the market. These are the patents on approved drugs that companies list with the FDA in a publication known as the Orange Book, available on the FDA website. To be listed in the Orange Book, patents are supposed to apply only to the drug itself and the use for which it was approved. Other patents related to the drug—such as those for new dosage forms or uses—are not supposed to be listed in the Orange Book.

But the FDA does not even attempt to

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hold drug companies to that restriction. Instead, drug companies list any patents they choose, no matter how remote from the originally approved drug and no matter how frivolous its use. Sometimes they list virtually the same patent twice. And the secondary patents can be listed at any time, even years after the original approval. This means that there is nearly always some patent in effect that can be used as an excuse for suing generic companies, thus triggering the 30-month additional exclusivity. By filing new patents even after the first lawsuit and then suing for infringement of them, it is even possible to obtain successive 30-month stays. In the case of GlaxoSmithKline's anti-depressant drug Paxil, five lawsuits against the same generic company resulted in five 30-month stays, staggered so that, altogether, GlaxoSmithKline extended its exclusivity by over five years.

In a damning report issued in July 2002, the Federal Trade Commission (FTC) documented the widespread anti-competitive activities within the pharmaceutical industry. And it implicitly took the FDA to task for failing to enforce legal restrictions on the listing of secondary patents in the Orange Book. The FTC found evidence that Hatch-Waxman is regularly exploited to prevent generic competition, and it has taken antitrust action against several brand-name and generic drug companies that colluded to keep generic drugs off the market.

In addition to the Hatch-Waxman Act, other congressional actions have also added to the time during which companies can sell brand-name drugs without generic competition. In accord with the international GATT agreements of 1994, Congress increased the basic patent term from 17 years after issuance to 20 years after filing—which is usually longer. And the Food and Drug Administration Modernization Act (FDAMA) of 1997 added six more months of patent protection if drug companies test their drugs on children. One might think that drugs that would be used by children should be tested on them as a condition of FDA approval, but Congress seems to prefer the legislated bribery route. The effect of all this is much longer periods of exclusivity for brand-name drugs.

In 1980, the average time in which a drug could be marketed without competition was about eight years: the patent term of 17 years minus the time it took for clinical trials and FDA approval. Now it is nearly twice that, and not just because of shorter times for testing and FDA approval. The companies extend their exclusivity by using every possible stratagem simultaneously, so that if one fails another might work. First, the big drug companies change their top-selling drugs in ways that will add three years' exclusivity, in accord with Hatch-Waxman. Second, they stagger multiple secondary patents, which serve as the pretext for routine lawsuits to trigger a 30-month extension. Third, nearly every blockbuster is tested on children to get the extra six months of patent protection. That is true whether the drugs are likely to be used by children or not. Fourth, brand-name companies sometimes collude with generic companies to delay their entry into the market. And fifth, when all else has failed, they can get a new patent on a trivial variation of their blockbuster and promote it as an "improved" version of the original.

Near Morning

Cow's breath warms his swaddling
a brood mare snuffles her foal
crumbs of prayer
caught up in the mouse's paws
the shadows of the guests
linger along the wall
though the guests have gone

A leather drawstring pouch
embroidered with dialect
bulges with drachmas
the scent of sandalwood
a costly porcelain jar
rolled up in the rug on the back
of the little mule Ham
sleepily nibbling her fetlock
hock-deep in snow

The man has lain down
with the woman at last
It is nearly dawn
For a moment
there is a stillness
so absolute
even the stars don't blink

The infant beginning
to inhabit his body
is startled by the cold
kiss of air on his cheek
by an ember falling into ashes
a sound as soft as the step
of a friend in the garden
a serry of torches
marching across the wall.

Melissa Green

THREE STORIES ARE illustrative of the many ingenious, often questionable tactics that are used to extend exclusivity. The first concerns the blockbuster Claritin—an antihistamine said to cause less drowsiness than cheaper over-the-counter drugs such as Benadryl. (Claritin costs $80 to $100 for one month's supply, compared with about one-tenth that for Benadryl.) It was patented by Schering-Plough in 1981, but not approved by the FDA until 1993 (after much scientific controversy about whether it was really effective at the low doses necessary to prevent drowsiness). Last year Claritin had sales of about $2.7 billion and brought in about one-third of Schering-Plough's revenues. The 17-year patent should have expired in 1998, but, according to a story last year in *The New York Times Magazine* by Stephen Hall, Hatch-Waxman added two years, and GATT added 22 months, and pediatric testing added another six months. These three extensions added four and a half years to the drug's exclusivity—worth billions of dollars. Starting in 1998, Schering-Plough sued eight generic drug companies for infringement of one or more of its four patents listed in the Orange Book. Hall reported the company's legal costs to be about $5 million per case—still a pittance compared with the stakes.

Back in 1987, Schering-Plough, with great foresight, patented the active metabolite of Claritin—that is, the molecule into which the body converts Claritin, which accounts entirely for the action of the drug. In December last year, it received FDA approval to market the Claritin metabolite under the name Clarinex, and began a massive promotional campaign to switch Claritin users to the new drug before Claritin was scheduled to lose its exclusivity in December 2002. To that end, it also priced Clarinex slightly below Claritin. Clarinex was approved for the treatment of year-round indoor allergies as well as seasonal outdoor allergies. That means Schering-Plough can market it as an improvement, even though it is simply what Claritin turns into after it is swallowed.

This year Schering-Plough petitioned the FDA to change Claritin from a prescription drug to an over-the-counter product. By law, the same drug at the same dose cannot be sold both ways, so the move will stop generic companies from competing in the prescription market when the patent expires. Last month the switch was approved. Claritin will probably be on drugstore shelves by the end of this year

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and Clarinex will be the only prescribed Schering-Plough allergy drug. We can see from the Claritin story that drug companies leave nothing to chance. They work simultaneously on every angle that might extend the exclusive marketing life of their blockbusters.

NEXT, THE PROZAC STORY. Prozac, made by Eli Lilly, was the first of a new type of anti-depressant called SSRIs. It was developed mainly on the basis of research done outside the company. In 1987, the FDA approved Prozac for the treatment of depression; in 1994, for the treatment of obsessive-compulsive disorder; in 1996, for bulimia; and in 1999, for geriatric depression. It rapidly replaced other types of anti-depressants because of its milder side effects. Prozac soon accounted for one-quarter of Lilly's revenues, with annual sales reaching $2.6 billion.

Like other companies in the same position, Lilly sued generic makers who hoped to enter the market. One of them, Barr Pharmaceuticals, charged that Lilly had listed essentially duplicate patents in the Orange Book. In 2000, the Court of Appeals for the Federal Circuit, which handles all patent appeals, agreed. It said Lilly had "double-patented" Prozac, and changed the expiration date from December 2003 to February 2001. The Supreme Court refused to hear an appeal, but Lilly used pediatric testing to extend the time to August 2001. Generic forms of Prozac are now on the market, and the price has come down accordingly. Usage has also dropped, as people respond to advertising for similar brand-name (and now more expensive) SSRIs such as Paxil and Zoloft, while advertising for Prozac has essentially stopped. In June 1999, however, Lilly patented Prozac Weekly, a new formulation that can be taken less often. It was approved by the FDA six months before the Prozac patent expired, and Lilly has exclusive marketing rights until 2004.

The most ingenious move to extend the life of Prozac was the creation of Sarafem—which is the identical drug in the identical dose, but colored pink and lavender instead of green, and taken for a new indication. In 1990, Dr. Richard Wurtman, the director of MIT's Clinical Research Center, and his wife, Dr. Judith Wurtman, took out a patent on SSRIs for the treatment of premenstrual syndrome. This is called a "method of use" patent. According to a CNN report on July 13, 2000, they tried to license the use to Eli Lilly, but the company was not interested—then. So they licensed it to Interneuron Pharmaceuticals, a small biotechnology company co-founded by Richard Wurtman, which is now called Indevus Pharmaceuticals. In 1997, Lilly, faced with the imminent loss of Prozac's exclusivity, decided to license its use for premenstrual syndrome from Interneuron—reportedly for $2 million plus a percentage of sales. Lilly renamed Prozac "Sarafem," colored it pink and lavender, and got FDA approval to market it for "premenstrual dysphoric disorder," which is not yet officially recognized as a distinct disorder in the psychiatric diagnostic manual. The Wurtmans and MIT get a portion of Indevus's royalties.

Sarafem's exclusivity was supposed to last until July 2003, but Lilly received a six-month extension because it tested the drug on children—which cannot have been scientifically very illuminating, since these "children" must have been beyond the age of menarche and therefore very nearly adults. Sarafem was priced slightly higher than the identical drug when it was called Prozac. Now that generic Prozac is on the market, Sarafem costs three and a half times as much—$8.70 per pill at our local drugstore, compared with $2.50 for the generic.

FINALLY, CONSIDER THE heartburn drug Prilosec, made by the British pharmaceutical firm AstraZeneca. This story was recently told in great detail in an article by Gardiner Harris in *The Wall Street Journal*. Prilosec was the number-one drug in the world, with sales of about $6 billion per year, until its patent expired in October 2001 after a six-month extension for pediatric testing. Like Schering-Plough and Lilly, AstraZeneca looked ahead. It sued generic companies for infringement of its layers of patents—eleven are listed in the Orange Book. To date, there is still no generic drug on the market: a delay worth billions to the company. At our local drugstore, Prilosec continues to sell for a whopping $6 per pill. And, like Schering-Plough, AstraZeneca patented a spin-off of its blockbuster drug. Prilosec consists of a mixture of two forms (or isomers) of the same molecule, only one of which is active. The company patented the active form, named it Nexium, and got FDA approval to market it just in time to switch people over to it before Prilosec's exclusivity ran out. This maneuver is very similar to Schering-Plough's Claritin story, except that users were switched to an isomer rather than a metabolite. (Lilly was even more audacious, since Sarafem is identical to Prozac.)

AstraZeneca launched a massive advertising campaign to persuade Prilosec users and their doctors that Nexium was somehow better, even though there is every scientific reason to expect that a double dose of Prilosec would be equivalent to Nexium. (This was never tested.) Very quickly, according to Harris, Nexium became the most heavily advertised drug in the United States. The media were blanketed with Nexium ads: "Today's purple pill is Nexium. From the makers of Prilosec." To help with the switch, AstraZeneca priced Nexium slightly below Prilosec, gave discounts to managed-care plans, barraged doctors with free samples, and even offered coupons in newspapers. The campaign reportedly cost the company $500 million in 2001.

Influencing Government

NONE OF THESE maneuvers to lengthen the lives of blockbuster drugs—all of which add to drug costs—could have occurred without the help of Congress. The drug industry has the largest lobby in Washington. In 2000, according to Public Citizen, it employed 625 lobbyists (more than one for each member of Congress) at a cost of $92.3 million—including 460 hired from 134 Washington lobbying firms. These lobbyists were extremely well connected. They included 21 former members of Congress and others of no doubt equal or greater influence, such as Haley Barbour, the former chairman of the Republican National Committee; Linda Daschle, the wife of outgoing Senate Majority Leader Tom Daschle; Scott Hatch, son of Senator Orrin Hatch; and Anthony Podesta, former counsel to Senator Ted Kennedy and brother of President Clinton's former chief of staff.

In addition, the industry made generous political contributions in the 1999–2000 election cycle, including $20 million in direct campaign contributions plus $65 million in soft money. Most of that money went to support Republicans, but these companies have cash enough to spread around. The top recipient in the past decade, according to government ethics watchdog Common Cause, was Hatch, a Republican, but powerful Democrats from states that are home to major drug companies, such as New Jersey Senator Robert Torricelli and Connecticut Senator Joseph Lieberman, also did well. As just one example of the industry's influence, in 1999 Torricelli introduced a bill to give Claritin and six other drugs a chance to lengthen their patents. According to Common Cause, this bill was introduced a day after Schering-Plough made a $50,000 contribution to the Democratic Senatorial Campaign Committee, which

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Torricelli chaired. Hatch held hearings on the bill, despite the fact that Schering-Plough is one of the companies that employed the lobbying firm for which his son worked. As it turned out, the bill was apparently too embarrassing even for Congress, and nothing came of it. Drug companies also influence political campaigns by funding and sometimes creating supposed grassroots organizations, such as Citizens for Better Medicare, to promote drug company interests in media ads and on websites.

One of the most important congressional actions affecting not only the pharmaceutical industry, but also the academic medical centers and the biotechnology industry, was the Bayh-Dole Act of 1980. According to this act and related legislation, academic institutions could patent the fruits of government-funded research and license them to private industry for royalties. The law applied not just to biomedical research, but that is where it saw its greatest application. Virtually overnight, Bayh-Dole made drug companies and academic institutions partners, both benefiting from taxpayer subsidies. The original purpose of Bayh-Dole was to encourage "technology transfer," the translation of basic discoveries into practical use. Accordingly, it stipulated that the products of the research must be made "available to the public on reasonable terms." It also stipulated that the government agency that funded the research (usually the NIH) should be informed by grantee institutions of all such patent and licensing arrangements. These provisions were never enforced. Last year, at the behest of Senator Ron Wyden, the NIH attempted to account for its contributions to a list of 47 blockbusters on the market. The fact that four of them (Taxol, Epogen, Procrit, and Neupogen) were developed largely with public funding was widely publicized. What was not so widely publicized was the fact that the NIH did not seem to know one way or the other about many of the other 43 drugs.

Whether the Bayh-Dole Act has been an overall success is controversial. Certainly the number of biomedical patents increased rapidly after it was passed. But many critics say that the effect of the legislation has often been opposite to its purpose. By encouraging thickets of licenses on every aspect of new technologies and producing a proprietary culture of secrecy, it may actually have slowed technology transfer and the exploration of new scientific leads. And it has certainly done nothing to ensure that drugs licensed from academic institutions are available "on reasonable terms."

In the past year or so, public dismay with high drug prices has begun to have an effect in Congress. In July, the Senate passed a bill introduced by Charles Schumer and John McCain that would prevent many of the abuses of Hatch-Waxman. It also included an amendment to permit the commercial re-importation of prescription drugs from Canada. (Congress passed a re-importation bill during the Clinton administration, but it was not signed by the president.) It did not pass the House, and there is every reason to doubt that anything like it will, given the implacable opposition of the drug industry.

THE TRICKIEST ISSUE for Congress concerning the pharmaceutical industry has to do with growing public pressure for a Medicare drug benefit. Everyone agrees that something has to be done to relieve senior citizens of the heavy burden of paying for prescription drugs out-of-pocket, and everyone, including the pharmaceutical industry, is on record as favoring some sort of extension of Medicare to cover outpatient prescription drugs. Widely differing versions of bills to provide such coverage passed the House and Senate this year, but could not be reconciled. The House version (the one favored by the pharmaceutical industry) proposed that coverage for prescriptions be paid in part by a set contribution from Medicare administered through private insurers. The Senate version was more generous, and provided for direct reimbursements by Medicare—without the intermediary of a private insurance plan.

Political posturing on both sides obscured a critical question in this debate: how much influence should the agency administering the program have on the approved list of covered drugs and on the prices paid to the manufacturers? A program administered directly through Medicare would probably drive harder bargains and involve more regulations than a program contracted out to private insurers, and these policies would very likely spread to drug benefit programs in the private sector as well. This is a prospect that the drug industry, understandably, greatly fears, and that is undoubtedly why drug companies contributed an estimated $30 million in the recent campaign, most of which went to Republican candidates and Republican-leaning special-interest groups. The Republican victory now ensures that if a Medicare prescription-drug benefit ever does emerge from the 108th Congress, it will certainly be much more to the industry's liking than the version that passed the Senate earlier this year.

Like Congress, the FDA is also on the industry's payroll. In 1992, Congress passed the Prescription Drug User Fee Act (PDUFA), which required drug companies to pay user fees to the FDA, but stipulated that they would be used only to speed up approval of drugs. These fees now account for about half the budget of the FDA's Center for Drug Evaluation and Research. This makes the FDA dependent on the industry it regulates.

For the industry, the fees are easily outweighed by the increased sales that come from getting faster approval, and by its greater clout with the agency. PDUFA has to be renewed by Congress every five years. In this year's version, which was tacked onto a bioterrorism bill, the fees were increased substantially. Although a small fraction can be used to monitor drug safety, the lion's share is earmarked to further speed drug approval. Yet the faster the approval, the more likely that dangerous drugs will reach the market. Indeed, over the decade since PDUFA was enacted, 13 prescription drugs have had to be withdrawn from the market because they were found to be dangerous—but not before they caused hundreds of deaths.

The FDA is also subject to industry pressures through its 18 standing advisory committees on drug approvals. These committees, which consist of outside experts in various specialties, are charged with reviewing new drug applications and making recommendations to the agency about approval. Many members of these committees have financial or other connections to interested companies. For example, three of the eight members of the FDA's Psychopharmacologic Advisory Committee, which recommended approval of Sarafem, reportedly had ties to Lilly.

The influence of the pharmaceutical industry on government clearly reaches into the Bush administration. Defense Secretary Donald Rumsfeld was CEO, president, and chairman of G. D. Searle, a major drug firm that recently merged with Pharmacia, which is now in the process of merging with Pfizer. Mitchell E. Daniels, White House budget director, was senior vice president of Eli Lilly. Bush *père* was on Lilly's board of directors before becoming president. When added to the industry's large contributions to the Bush campaign in 2000, these connections could well have had something to do with the last-minute withdrawal of Dr. Alastair Wood's nomination as FDA commissioner earlier this year.

Wood, a widely respected professor of clinical pharmacology at Vanderbilt University in Nashville (and a former colleague of ours on the editorial staff of

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The New England Journal of Medicine), reportedly was warmly recommended by Senator Bill Frist and Health and Human Services Secretary Tommy Thompson. But he was also known as a supporter of strong regulatory action by the FDA and had evidently ruffled feathers among drug industry executives and other champions of a "free market" for drugs, including the editors of *The Wall Street Journal*. According to an article last May in *The Boston Globe*, the result was behind-the-scenes pressure on the White House, which led to an abrupt change of heart. Frist was quoted as saying that "there was a great deal of concern that he [Wood] put too much emphasis on [drug] safety." And Dr. Raymond Woosley, also a distinguished clinical pharmacologist and an earlier candidate for the post (who opted instead for a major academic position), remarked, "It is pretty clear that anyone who has said anything that industry doesn't like isn't going to make it."

Dr. Mark McLellan, the newly confirmed commissioner, evidently was not opposed—he may even have been supported—by industry, but he has not taken public stands on any of the critical issues discussed here that might have influenced the views of the pharmaceutical companies. He is both a physician and an economist who has served recently on the president's Board of Economic Advisers, but he has no experience in drug regulation or clinical pharmacology, so he has much to learn about his new job. Morale at the FDA is said to be very low, and it remains to be seen whether the young commissioner can improve it with the policies and management style he will bring to this critical task. Only time will tell whether he intends to stand up to the pressures from the industry and from a Congress that is now more friendly to the industry than ever before.

What Should Be Done?

THE PHARMACEUTICAL INDUSTRY dominates just about every aspect of the American health care system that is related to its business interests. It uses its wealth and its political clout to influence all who might check or monitor its activities—including physicians, professional and academic institutions, Congress, and the FDA. Hiding behind a screen of public relations and advertising, it expects consumers to sit still for its excesses, with the clearly implied threat that otherwise it will be forced to stop producing its medical miracles.

What reforms might remedy the situation and direct the industry toward more socially useful behavior? First, the laws and regulations relating to the patenting of drugs and the granting of exclusive marketing rights need to be changed. The U.S. patent system is based on Article I, section 8, of the Constitution: "Congress shall have power ... to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Patents were supposed to protect the intellectual property rights of inventors while enabling them to share information that others might use to advance the field, all in the public interest. But in the modern pharmaceutical business, as we have shown, the system is being grossly abused to allow companies to patent drugs that cannot reasonably be called new inventions, and to permit extensions of exclusivity on the flimsiest of legal pretexts.

The system has allowed the companies to flood the market with expensive me-too drugs and absurdly trivial variations on existing products. The system has also been used by the companies to delay, and sometimes to prevent altogether, competition from generic drugs. There is no question that modifications of Hatch-Waxman are needed. The FTC and Schumer and McCain are correct in their criticisms of the system, and we certainly support the general thrust of their proposals for reform. But more is needed. The whole patent system needs a new look, in view of the recent relaxation of standards for both usefulness and originality. The issues are technical and complicated, and the details of the needed changes will require careful consideration by experts to avoid making a bad situation even worse. We suggest study by a commission of experts (free of industry control) before any legislative or regulatory action is taken, but the completion of the study and the enactment of reforms deserve a high congressional priority.

STRENGTHENING THE FDA and improving its operations also should be a high priority for Congress. The FDA needs more help from congressional appropriations in meeting its growing responsibilities. Its dependence on user fees from industry should be replaced by adequate government support. This is an agency with an agenda of enormous importance to the public health, and it should not have to depend on the industry it is supposed to be regulating, any more than the SEC, for example, should have to depend on contributions from publicly traded corporations.

Of crucial importance, FDA regulations should be changed to require that new drug applications include evidence not only of the safety and the efficacy of a new drug, but also of the drug's effectiveness in relation to existing products of the same type. Approval should depend in part on whether the new drug adds something useful in terms of greater effectiveness, greater safety, fewer side effects, or substantially greater convenience. The FDA should be allowed reasonable flexibility in its judgments, of course; but it should not approve drugs that on balance offer trivial advantages or no advantages at all over products already available, and may even be worse. That policy change alone would dramatically improve the medical value of new prescription drugs, since drug companies would have no incentive to turn out me-too drugs and would have to shift their R&D emphasis to finding more innovative ones.

The requirements for membership on FDA advisory committees, upon which the agency depends for advice in the evaluation and approval of new drugs, should be strengthened to avoid conflicts of interest. Given the pervasiveness of the financial ties with the drug industry that now exist among clinical experts in most fields, it is admittedly difficult to find qualified consultants without such conflicts. But the task is not impossible, and the agency should be required to show that it is making every reasonable effort. Without unbiased experts, the FDA cannot get the help it needs to withstand the pressures from industry to approve drugs that really ought not to be allowed on the market or to keep drugs on the market that ought to be withdrawn.

We have already explained why we believe that direct-to-consumer ads are not in the public interest. The FDA should reverse its policy and prohibit such ads in the future, or at least greatly restrict their use. The drug industry and the advertising agencies, which have a financial interest in such ads, will strongly resist, so any such action would probably require a congressional mandate. For reasons of public health and safety, however, the FDA is acknowledged to have purview over pharmaceutical advertising, so there is no question of an unfettered "right to commercial free speech" in this case. The issue is how, and how much, it should be regulated.

Reforms are also needed in the current system for conducting clinical trials. The drug industry should not control the medical evaluation of its own products. The industry has a legitimate interest in seeing that these clinical trials are carried out, and it should pay for most of them. But the

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design and the conduct of the trials, and the collection, the analysis, and the interpretation of the results, should be the responsibility of the independent clinical investigators who do the work—not of the sponsoring drug companies. This will require stringent oversight or elimination of the hired businesses that conduct clinical trials for the drug companies, as well as substantial reforms at the academic centers and teaching hospitals that would then carry out most of the studies. Perhaps drug-company trials might best be monitored through some centralized, not-for-profit institution that could be a repository for contract proposals from the companies and an intermediary for the distribution of funds. What should be avoided in any case is the market competition among academic centers for drug-company business. This threatens to transform our medical centers into commercial enterprises, with the inevitable weakening of their commitments to education, clinical care, and unrestricted research. Guidelines such as those recently promulgated by the AAMC will be helpful in preventing this transformation, but the outright elimination of a commercial market for clinical trials would probably be most effective.

IN DEVISING REMEDIES for the problems described here, we must not lose sight of the fact that the prescription-drug industry can sell only the drugs that doctors are willing to prescribe. We have noted the costly and excessive lengths to which drug companies go to influence the prescribing behavior of physicians. But this is done only with the acquiescence of the doctors and their professional associations and educational institutions. If the drug industry presumes to take responsibility for the "education" of physicians, it is because the profession allows—or even invites—the industry to do so. In so doing, the profession abdicates its responsibility to act as fiduciaries and advisers for patients. The profession must take the necessary steps to end its financial and intellectual reliance on the pharmaceutical industry. We believe that many physicians (including medical educators) share this view but hesitate to voice it publicly. The public should be able to get trustworthy expert advice from physicians on what drugs are safe and effective and which of these, if any, are needed for optimal and cost-effective treatment. This is unlikely if much of the profession and its institutions are in the industry's pocket.

Finally, we note that most of the reforms we have suggested are intended to improve the quality of prescription drugs and the discrimination with which they are prescribed. Most would probably also reduce expenditures. But the greatest contribution to the control of prescription-drug costs could come from the bargaining power of large purchasers. The largest potential purchaser is the government—through Medicare, Medicaid, and the Veterans Affairs System. If payment for all the drugs used by the patients in these programs were to be negotiated by the government, there is no doubt that major savings would be achieved, particularly if physicians were also to use formularies that limit the routine use of me-too drugs. Such measures would undoubtedly spread to the private insurance system. However, with Republicans now in control of Congress, federal policies will probably become even friendlier to the pharmaceutical industry.

Prescription drugs are an essential part of modern medical care. Americans need good new drugs at reasonable prices. Yet the pharmaceutical industry is failing to meet that need. There is a widening gap between its rhetoric and its practices. Neither the medical profession nor government has so far done much to remedy the situation, but sooner or later they will have to act. The increased conservative complexion of the new Congress and the growing dependence of physicians on pharmaceutical money will probably delay such action. Nevertheless, the public is aroused and some kind of reform seems ultimately inevitable. The consequences of continuing to allow an essential industry to put profits above the public interest are simply too grave. ■

CORRESPONDENCE

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Red scare

TO THE EDITORS:

Tony Judt, in his review of *Koba the Dread: Laughter and the Twenty Million* by Martin Amis, almost arrives at the point of the book but falls just shy ("The Information," November 4). He doesn't recognize that Amis, like so many others, is disgusted that the halo effect of communist-style political propaganda infected not only his father's generation but, even after the collapse of the Soviet Union, his own contemporaries—most notably the odious and self-promoting Christopher Hitchens.

Judt also misses the point that a comparison of Nazism and communism has to include the added dimension of the effect of Bolshevism on the intellectual community of the West. While the residue of Nazism is relegated to the skinheads and rednecks, communist ideology still reigns in left-leaning intellectual cadres and continues to undermine democratic societies. Consequently, the horrors of Joseph Stalin, mostly ignored on campus and in the media, need to be remembered over and over again until the fellow Western traveling intelligentsia repent.

BERNIE REEVES
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TO THE EDITORS:

Judt asks an excellent question: "[W]hy are we not offended by ex-Communists, or those who still evince some nostalgic sympathy for the Communist project, whereas we execrate Nazi sympathizers and shun the company of ex-Nazis?" Judt, like everybody else, does not consider the possibility that communism comes from Marxism. Nobody is willing to explain why Stalin—and Pol Pot, Mao Zedong, and Kim Jong Il—brought totalitarianism and mass starvation to their countries. Writers and journalists cannot bring themselves to think that the cruelty of Marxist regimes comes from the writings of Karl Marx.

Marx opposed human variety. Marxists described a future when there would be no disagreement and the state would wither away. In *The German Ideology*, Marx wrote of a world where there would be no specialization and everyone would "hunt in the morning ... rear cattle in the evening, [and] criticize after dinner." A philosophy that disapproves of individuality cannot be expected to tolerate individuals. And a state that attempts to change human nature is necessarily cruel and repressive.

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TONY JUDT REPLIES:

Bernie Reeves and George Jochnowitz are both one-idea men. For Reeves, it's all the fault of unrepentant, "left-leaning," fellow-traveling campus and media, and Western "intellectual cadres." Jochnowitz at least has the virtue of brevity: It's all the fault of Marx. Nice tidy answers to messy, complicated problems. If only it were that easy. ■

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CAMBRIDGE DIARIST

A Just Man

JOHN RAWLS, AMERICA'S greatest political philosopher, died last week at the age of 81. Rawls taught philosophy at Harvard from 1962 to 1994. He is best known for his book *A Theory of Justice* (1971), which offers the most compelling account of liberal political principles since John Stuart Mill. In the 1950s and 1960s, Anglo-American political theory was virtually moribund, consigned to irrelevance by linguistic analysis and moral relativism. Rawls revived political theory by showing that it was possible to argue rationally about justice, rights, and political obligation. He inspired a new generation to take up classic questions of morality and politics.

A THEORY OF JUSTICE IS NOT AN EASY read. But its distinctive contribution can be seen in the way it develops three key ideas: individual rights, the social contract, and equality. Before Rawls wrote, the dominant conception of justice in the English-speaking world was utilitarian: Laws and public policies should seek the greatest good for the greatest number. Rawls rejected this view as failing to respect individual rights. Suppose, for example, that a large majority despises a minority religion and wants it banned. Utilitarian principles might support the ban. But Rawls argued that certain rights are so important that the desires of the majority should not override them.

IF RIGHTS CANNOT BE BASED ON utilitarian principles, how can they be justified? Rawls answered this question with a version of social-contract theory based on a novel thought experiment: Imagine making a social contract without knowing whether we are rich or poor; strong or weak; healthy or unhealthy; without knowing our race, religion, gender, or class. The principles we would choose behind this "veil of ignorance" would be just, Rawls argued, because they would not be tainted by unfair bargaining conditions. If we imagined ourselves behind the veil of ignorance, Rawls maintained, we would choose two principles to govern society. The first would require equal basic liberties for all citizens (speech, association, religion). The second would permit only those inequalities of income and wealth that work to the advantage of the least well-off members of society. So it might be just for doctors to make more money than janitors, for example, but only if such pay differentials were necessary to attract talented people to medicine, and only if doing so helped the least advantaged members of society. This is Rawls's famous "difference principle."

SOME CRITICS OF RAWLS'S EGALITARianism reply that people behind the veil of ignorance might gamble on inequality and choose a principle that gives people the right to keep whatever wealth they can accumulate. Rawls's best answer to this challenge steps outside the contract argument and draws on the moral impulse behind his theory: The reason we do not deserve, as a matter of right, the benefits that flow from the exercise of our talents is that we cannot take credit for those talents in the first place. That a market society values the skills some people happen to have is their good fortune, not a measure of their moral merit. So we should not regard the bounty and prestige the market bestows on athletes and anchormen, entrepreneurs and stockbrokers, academics and professionals, as a reward for superior virtue. Instead, we should design our tax and educational system so the accidents of nature and social circumstance work for the benefit of everyone. This challenges a meritocratic assumption that runs deep in American life: that success and virtue go hand in hand, that the United States is wealthy because it is good. If Rawls is right, the meritocratic assumption should give way to a more generous stance toward those less favored by fortune and circumstance.

SHORTLY AFTER HIS RETIREMENT, Rawls joined me for a discussion with students in an undergraduate course I teach on justice. I asked him about Immanuel Kant, his philosophical hero. Despite the similarities in their philosophies, did Kant go wrong in concluding that the equality of human beings is "perfectly consistent with the utmost inequality" of material possessions? Rawls answered with a wry evasion: "I want to say that Kant is really, truly a very great man. One doesn't even think of criticizing him without being aware of that. No, I wouldn't say that Kant goes wrong. ... He was ahead of his time. That you get anything at all out of East Prussia in the eighteenth century is wonderful. And that you get Immanuel Kant is a miracle."

IT IS SOMETHING OF A MIRACLE, OR at least a surprise, to find an American philosopher mentioned in the company of Thomas Hobbes, John Locke, Jean-Jacques Rousseau, Karl Marx, and John Stuart Mill. Political philosophy is one of the few intellectual fields to which America's contribution has been meager. Some attribute this dearth to the success of American democracy. Wars of religion, decaying empires, failed states, and class struggles offer richer fare for philosophy than do stable institutions. This may be why the most notable expressions of American political thought have come not from philosophers but from participants in American public life: Thomas Jefferson, James Madison, Alexander Hamilton, John C. Calhoun, Abraham Lincoln, Frederick Douglass, Jane Addams, Oliver Wendell Holmes, Louis D. Brandeis. Rawls is one of the few non-practitioners of politics to loom large in American political thought.

WHEN ALEXIS DE TOCQUEVILLE VISited the United States in the 1830s, he observed that "no country in the civilized world pays less attention to philosophy than the United States." Tocqueville's observation was borne out 170 years later by the public notice of Rawls's death. The major newspapers of Europe—*Le Monde* in France, *The Times*, *The Guardian*, *The Independent*, and *The Daily Telegraph* in England—all marked the passing of America's political philosopher with more extensive obituaries than appeared in *The New York Times* or *The Washington Post*. This may suggest that Rawls's egalitarianism has more resonance for European welfare states than for America's market-driven society. But it also reflects the fact that philosophy continues to play a more prominent role in the public discourse of the Old World than the New.

RAWLS'S MODESTY WAS LEGENDARY, as was his kindness to students and junior colleagues. I first read *A Theory of Justice* as a graduate student at Oxford in 1975 and made it the subject of my dissertation. When I came to Harvard as a young assistant professor in the government department, I had never met the figure whose great work on liberalism I had studied. Shortly after I arrived, my phone rang. A hesitant voice on the other end said, "This is John Rawls, R-A-W-L-S." It was as if God himself had called to invite me to lunch and spelled his name just in case I didn't know who he was.

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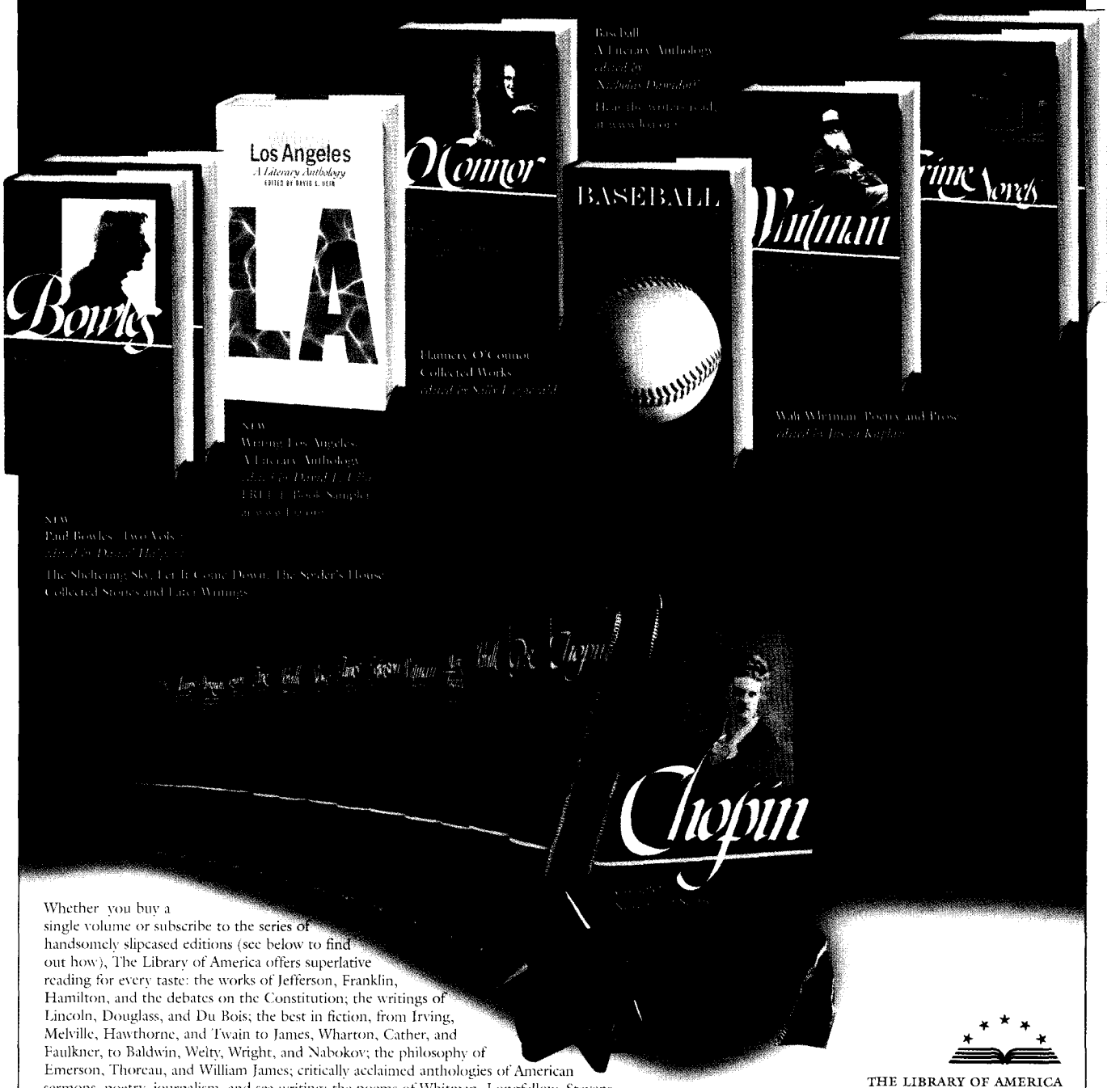

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The Revolution in Air Travel

Robert E. Hall is the Robert and Carole McNeil Senior Fellow at the Hoover Institution and a professor of economics at Stanford University.

A visit to JFK airport is a poignant illustration of the transformation sweeping U.S. air travel. The beautiful TWA terminal is silent, boarded up, surrounded by ugly chain link. United's old terminal now bustles with passengers on JetBlue. Wall Street thinks the traditional airlines are jokes—United's market capitalization is only $146 million, compared to $10.6 *billion* for Southwest.

Airlines operating under the old model say they just need givebacks from their highly paid employees to stay in business. But that claim understates their economic plight. In the most recent quarter, United reported an operating deficit of 13 percent of its revenue. United deploys airplanes and other capital worth about $21 billion. To retain that capital, United needs to earn a profit of 11 percent of its revenue. Thus, its economic deficit is not 13 percent but 24 percent. United's payroll is 47 percent of its revenue. So the employees would have to give back more than half their pay to make United viable in the longer run. That's most unlikely to happen. United needs a radically new model.

When the traditional airlines compete with JetBlue and other airlines operating under the new model, they accept fares that fall short of costs or they abandon routes to the upstarts. Southwest has pushed United out of many markets in the West, including the California corridor that United once dominated. United has matched JetBlue's fares from Oakland to Washington, D.C., but loses money on every flight, even full ones. As JetBlue and others continue to expand rapidly, the traditional airlines will suffer further reductions in profit unless they update their models. At the same time, the new airlines will adapt their models, especially as they begin to pursue the business flyer.

Southwest has locked itself out of the business market for all but short flights because its seats are cramped and cannot be reserved. JetBlue is a serious rival to the traditional airlines in transcontinental markets because it reserves seats. Other key features of the JetBlue model are a strong commitment to operating on time, operational efficiencies based on simple fares, and the lack of food service. By putting seats where old-fashioned airlines have galleys, JetBlue and Southwest have raised their revenue per planeload substantially. And nobody misses airline food.

But JetBlue cannot penetrate the upper echelons of the business market until it provides more space. Business travelers still pick the traditional airlines if they have a chance at business- or first-class because the single biggest factor in comfort on longer flights is the space between the rows of seats. The next step for JetBlue is to put in six rows of spacious seats in its planes and to charge a premium for them. By the same token, to survive, **the traditional airlines need to rip out their galleys, simplify their fares and service, and copy the operational efficiencies of the upstarts.**

The air traveler will see rapid changes in the next few years. Either American, United, and the other traditional airlines will adopt and improve the JetBlue model, or they will go the way of Eastern and Pan American.

— Robert E. Hall

Paid for by the Hoover Institution, Stanford University.

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